

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

* * *

HOBART CORPORATION, et al. ,

Plaintiffs,

vs. CASE NO. 3:13-cv-00115-WHR

THE DAYTON POWER AND

LIGHT COMPANY, et al. ,

Defendants.

* * *

Deposition of HORACE J. BOESCH, JR. ,
Witness herein, called by the Plaintiffs for
direct examination pursuant to the Rules of Civil
Procedure, taken before me, Michelle A. Elam, a
Notary Public in and for the State of Ohio, at the
offices of Sebaly, Shillito + Dyer, 1900 Kettering
Tower, 40 North Main Street, Dayton, Ohio, on
Thursday, the 23rd day of October, 2014, at 9:03
a.m.

* * *

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25	identification.)		

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15 * * *

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1 HORACE J. BOESCH, JR.
2 of lawful age, Witness herein, having been first
3 duly cautioned and sworn, as hereinafter
4 certified, was examined and said as follows:

5 DIRECT EXAMINATION

09:03:44 6 BY MR. SILVER:

09:03:44 7 Q. Mr. Boesch , can you state your
09:03:47 8 full name for the record ?

09:03:48 9 A. Yes . My name is Horace J. Boesch,
09:03:53 10 Jr.

09:03:53 11 Q. And are you sometimes known as
09:03:54 12 Jack ?

09:03:55 13 A. Yes . Yes .

09:03:56 14 Q. May I call you Jack ?

09:03:58 15 A. Yes . You sure may . Everybody
09:04:00 16 that knows me calls me that .

09:04:01 17 Q. My name is Larry Silver .

09:04:04 18 A. Yes, sir .

09:04:04 19 Q. And I'm an attorney in some
09:04:06 20 litigation involving the South Dayton Dump --

09:04:10 21 A. Yes, sir .

09:04:11 22 Q. -- & Landfill . I represent three
09:04:14 23 companies in the litigation , the Plaintiffs in
09:04:16 24 the litigation , NCR Corporation , Hobart , and
09:04:19 25 Kelsey -Hays .

09:04:22 1 And we're here to talk about your
09:04:27 2 experiences with the South Dayton Dump and get
09:04:31 3 some information on that. You've been deposed at
09:04:35 4 least two times before?

09:04:36 5 A. Two times. Yes.

09:04:38 6 Q. In 2006 by the EPA?

09:04:40 7 A. Yes.

09:04:41 8 Q. Do you remember that?

09:04:42 9 A. Yes, sir.

09:04:42 10 Q. And also in 2011 by other
09:04:46 11 attorneys for the Plaintiffs in this --

09:04:48 12 A. Yes.

09:04:49 13 Q. -- in a prior version of this
09:04:51 14 litigation?

09:04:52 15 A. That's correct.

09:04:52 16 Q. Okay. We are sorry to have to
09:04:55 17 bring you back. The reason for bringing you
09:04:57 18 back a third time is that there are new parties
09:05:01 19 in the case that weren't -- were not in the
09:05:07 20 case that the prior deposition in 2011 was part
09:05:13 21 of, and I needed to give the new attorneys a
09:05:16 22 chance to hear what you had to say and question
09:05:19 23 you.

09:05:20 24 A. Okay.

09:05:21 25 Q. So what I'm going to do -- have

09:05:23 1 you had other depositions in addition to those
09:05:26 2 two about any subject ?

09:05:27 3 A. Not really . Well , several years
09:05:33 4 ago , we had -- I was a partner in a company
09:05:37 5 called Coldwell Banker Heritage Realtors , and
09:05:40 6 we had sold a house out in Beavercreek that had
09:05:46 7 sand underlying it that we had to go to court
09:05:47 8 and defend. We ended up buying the house back .
09:05:50 9 We never owned the house , but we sold it. A
09:05:53 10 man from the field that had been in Iraq or
09:05:56 11 some place didn't like sand under his house.
09:05:58 12 It never moved or anything . But Gem City
09:06:00 13 Savings had a mortgage on it , but I had to give
09:06:03 14 testimony in regard to that whole thing . I
09:06:07 15 ended up -- finally , we settled it.

09:06:08 16 Q. Was that testimony in court ?

09:06:10 17 A. Yes .

09:06:10 18 Q. And I'll just remind you , just a
09:06:12 19 couple of instructions on deposition s to
09:06:15 20 refresh your memory .

09:06:16 21 I'm going to ask you a series of
09:06:18 22 questions . Then I'm going to give you a chance to
09:06:20 23 answer each question . It's important that you
09:06:23 24 listen carefully to the question , answer it to the
09:06:27 25 best of your ability , but answer what you know ,

09:06:30 1 don't speculate . If you don't understand the
09:06:32 2 question , just let me know immediately and I will
09:06:36 3 rephrase it . If you don't hear me , you mentioned
09:06:38 4 that you have a little bit of a hearing issue .

09:06:41 5 A. Yeah . That's what my wife says .

09:06:43 6 Q. That's not the kind of hearing
09:06:46 7 issue I had in mind , but I understand . So if
09:06:54 8 you can't hear my question , just ask me to
09:06:58 9 repeat it and I will be happy to do so .

09:07:00 10 A. Yes, sir .

09:07:00 11 Q. The other important thing for the
09:07:04 12 court reporter 's benefit , it's very important
09:07:05 13 that we don't talk over each other . She will
09:07:05 14 have a lot of difficulty getting everything
09:07:09 15 down. So please wait until I finish my
09:07:12 16 question before you begin your answer, and I'll
09:07:13 17 try not to interrupt your answer with the next
09:07:16 18 question .

09:07:17 19 If you need a break at any time ,
09:07:19 20 let me know or let your attorney , Tim , know .

09:07:23 21 A. Yes, sir .

09:07:23 22 Q. All right . Your birth date ?

09:07:26 23 A. 2-2-32 .

09:07:28 24 Q. And I take it you're still
09:07:31 25 gainfully employed ?

09:07:32 1 A. Well , when I want to be . That's
09:07:35 2 about it . I do do a little work , yes . Not
09:07:40 3 much . But some old clients that I handle some
09:07:44 4 buildings for .

09:07:44 5 I went with a friend of mine as a
09:07:48 6 commercial broker . That's where I started out.
09:07:50 7 And I ended up in residential because some other
09:07:53 8 friends of mine started this residential company .
09:07:56 9 And I was with them for forty years . So --

09:07:58 10 Q. That would be Heritage?

09:07:59 11 A. Heritage . Uh-huh. Coldwell --

09:08:01 12 Q. And you're still working in
09:08:03 13 association with Heritage now ?

09:08:03 14 A. No . No . I -- we sold the company
09:08:05 15 in 2001 , and I stayed on till -- I guess it was
09:08:08 16 two years ago . Then I went with Mark . I was
09:08:11 17 just -- they didn't want me to do a lot of
09:08:13 18 commercial business so I just said well , forget
09:08:16 19 it then . That was where I really started out .
09:08:19 20 So I went with Mark .

09:08:20 21 Q. So you started out in commercial ,
09:08:22 22 but now at the current time you're doing
09:08:25 23 residential real estate ?

09:08:26 24 A. No . I'm back to commercial .

09:08:26 25 Q. Okay.

09:08:28 1 A. I stay away -- in fact , I gave a
09:08:30 2 couple listings to a couple agents at Coldwell
09:08:37 3 Banker Heritage just the other week . I don't
09:08:37 4 touch the residential any more .

09:08:40 5 Q. You were born in Dayton , the
09:08:42 6 Dayton area ?

09:08:44 7 A. In Columbus , actually .

09:08:45 8 Q. In Columbus , Ohio ?

09:08:46 9 A. Yes, sir.

09:08:46 10 Q. And tell me about your family .
09:08:48 11 Your father 's name was also Horace ?

09:08:51 12 A. Horace, yes . Horace J. Boesch .
09:08:55 13 Yes, sir .

09:08:55 14 Q. And your father was in what
09:08:57 15 business ?

09:08:58 16 A. He was an attorney , and he was a
09:09:00 17 frustrated builder . He built buildings on the
09:09:05 18 weekend . And they started that dump down
09:09:07 19 there , little gravel pit .

09:09:08 20 Q. Now , your mother -- your father
09:09:11 21 passed away in 1979 ?

09:09:13 22 A. '79 . My mother passed away in
09:09:15 23 1972 .

09:09:16 24 Q. And I saw in the prior transcript
09:09:19 25 a reference to your stepmother ?

09:09:20 1 A. Yes . Kathryn Boesch . Yes, sir .

09:09:23 2 Q. Did she pass away recently ?

09:09:25 3 A. March .

09:09:26 4 Q. Now , siblings , do you have any --

09:09:26 5 A. I have --

09:09:32 6 Q. -- brothers and sisters ?

09:09:32 7 A. My brother died in '9 -- in '87 --

09:09:39 8 '86. His --

09:09:39 9 Q. Go ahead . I'm sorry .

09:09:41 10 A. His widow and my two young er

09:09:46 11 sisters are along with me and involved in the

09:09:49 12 dump . Yes.

09:09:49 13 Q. All right. And your brother who

09:09:51 14 dies was a young er brother ?

09:09:52 15 A. Yes. Young er brother . Yes .

09:09:53 16 Q. And I remember reading in one of

09:09:54 17 the transcripts that he used to pick with you

09:09:56 18 at the dump back in the day ?

09:09:57 19 A. Well , back when I was going to UD ,

09:10:00 20 it was during the Korean War -- or the Korean

09:10:04 21 police action . Pardon me . And we used to go

09:10:08 22 over there and they -- they mine some scrap

09:10:11 23 iron that was in the ground . They went back --

09:10:14 24 there was a company that leased off of us ,

09:10:17 25 Broadway Sand & Gravel and they used their

09:10:20 1 trucks and their steam shovel to dig up some
09:10:26 2 old areas of the north end of the bridge there
09:10:29 3 where there was another company there years
09:10:30 4 ago, back in the '20s, Charlie Cinn's dump, and
09:10:34 5 so they mined that and got the scrap out.

09:10:36 6 They had a machine. I'll tell you,
09:10:38 7 they got into all kinds of machine. They had a
09:10:42 8 machine that was a hopper and they dumped this
09:10:44 9 stuff in this hopper and underneath it was a
09:10:46 10 conveyor belt and it come out on this conveyor
09:10:47 11 belt over a bank and then they had a magnet ic
09:10:51 12 conveyor belt that overlapped it, it would pick up
09:10:53 13 all the metal and all the -- off-ball the trash
09:10:56 14 and stuff, would go down into a big old dump truck
09:10:58 15 and they'd dump it back in and then they took the
09:11:01 16 scrap and sold it.

09:11:02 17 And my brother and I used to work on
09:11:04 18 that conveyor when we were going to school. We'd
09:11:07 19 work on the weekends. And the conveyor belt, the
09:11:10 20 magnetic conveyor belt, would not pick up brass so
09:11:12 21 we'd pick the brass off. For some reason, it
09:11:16 22 wouldn't pick it up.

09:11:17 23 Q. This was Broadway Sand & Gravel's
09:11:19 24 conveyor?

09:11:20 25 A. Well, it was the South Dayton

09:11:22 1 Dump . It was all there together. The dump
09:11:23 2 originated because of the gravel pit . Then
09:11:25 3 the South Dayton -- or Broadway Sand & Gravel
09:11:29 4 took the gravel out of the ground and they had
09:11:31 5 a hole and filled it up . They started a dump
09:11:34 6 and filled it up .

09:11:35 7 Q. And do you know who owned Broadway
09:11:37 8 Sand & Gravel?

09:11:37 9 A. A fellow by the name of Bill
09:11:40 10 Jones .

09:11:40 11 Q. And that company is still around ?

09:11:42 12 A. Well , it's still around , but it's
09:11:44 13 not the same owner . It's changed hands . A
09:11:47 14 Larry Cornett owned it and he died . And
09:11:50 15 there's some litigation -- I guess his estate ,
09:11:52 16 from what they tell me, has been open for about
09:11:53 17 eight years . I don't know what they're doing
09:11:55 18 with that. They're over on the other side of
09:11:58 19 Interstate 75 , up on the hill side there . If
09:12:01 20 you come up that way , you can see them there .
09:12:04 21 They're up there where Weiler just built a new
09:12:07 22 building . And CompuNet is up there in some
09:12:09 23 gray buildings . And they're beyond them .
09:12:12 24 They're the last tract up there before you get
09:12:14 25 to the river .

09:12:15 1 Q. Okay . Now , you mentioned a couple
09:12:18 2 of younger sisters , did you say ?

09:12:19 3 A. Yes .

09:12:19 4 Q. Did they ever do any picking at
09:12:21 5 the dump ?

09:12:22 6 A. No . No . They wouldn't go near
09:12:24 7 it .

09:12:24 8 Q. And then you had an Uncle Bob who
09:12:27 9 was a lawyer ?

09:12:28 10 A. Yes .

09:12:28 11 Q. Has he passed away ?

09:12:30 12 A. Yes . And Uncle Charles that was a
09:12:33 13 lawyer , too .

09:12:34 14 Q. Yeah . I remember you saying there
09:12:36 15 were five lawyers in the family ?

09:12:38 16 A. Yeah .

09:12:38 17 Q. All right . I'm going to go
09:12:40 18 quickly through your -- you testified about
09:12:44 19 your school history , schooling history , and job
09:12:47 20 history , but I just want to get it for the
09:12:50 21 record for --

09:12:51 22 A. Okay .

09:12:51 23 Q. -- for this deposition . So I'll
09:12:53 24 try to do it as quickly as possible . You went
09:12:56 25 to grade school in Dayton ?

09:12:58 1 A. Until the fifth grade . Yeah.
09:13:04 2 Holy Angels . Then the World War -- my uncles
09:13:08 3 were young and they were in the Reserves and
09:13:08 4 the --

09:13:11 5 MS. KAUFMAN: I'm so sorry , I
09:13:13 6 couldn't hear . Did you say you went to grade
09:13:13 7 school until fifth grade or what --

09:13:17 8 THE WITNESS: Yeah. I went to Holy
09:13:19 9 Angels till the fifth grade on Brown S treet here
09:13:22 10 in Dayton . And then I used to -- instead of going
09:13:23 11 home , I'd go over and play tag football at the old
09:13:28 12 Patterson Estate and my mother couldn't come after
09:13:29 13 me because she had the younger kids so my dad said
09:13:31 14 I'll put you someplace where I can find you . So
09:13:33 15 he put me in a boarding school in Fayette ville ,
09:13:38 16 Ohio, St. Aloysius Military Academy, down there.
09:13:38 17 It's no longer in existence . Fayette ville is a
09:13:43 18 town below Dayton here about -- well , it's just
09:13:45 19 south of Wilmington .

09:13:46 20 Q. So you were there for what, three
09:13:48 21 years ?

09:13:49 22 A. Eight years. Till the eighth
09:13:51 23 grade.

09:13:51 24 Q. Oh, okay. Well, fifth grade
09:13:51 25 until --

09:13:51 1 A. The eighth grade. I graduated
09:13:52 2 from grade school down there . I finished grade
09:13:54 3 school.

09:13:54 4 Q. But in the eighth grade . So you
09:13:58 5 were there six through eight ?

09:13:59 6 A. Right.

09:13:59 7 Q. Is that right?

09:14:00 8 A. That's correct .

09:14:00 9 Q. Then you started high school at
09:14:02 10 Chaminade ?

09:14:02 11 A. Chaminade. Right .

09:14:03 12 Q. And you went through Chaminade
09:14:05 13 through your junior year ?

09:14:07 14 A. Yes . That's correct .

09:14:08 15 Q. And then you went to a boarding
09:14:10 16 school in Georgia ?

09:14:11 17 A. Yes . Georgia Military College .
09:14:13 18 It was a junior college and a prep school .

09:14:15 19 Q. And you graduated from the
09:14:17 20 military college in Georgia --

09:14:20 21 A. '49 .

09:14:21 22 Q. -- in 1949 ?

09:14:22 23 A. Yes .

09:14:22 24 Q. And I think you mentioned that you
09:14:26 25 worked on the county road crew --

09:14:28 1 A. Yes .

09:14:29 2 Q. -- during your high school and
09:14:31 3 college years ?

09:14:32 4 A. During the summertime . Yes, sir .

09:14:34 5 Q. I had that same job up in
09:14:36 6 Cleveland .

09:14:36 7 A. Oh, yeah. I was on the tar crew .
09:14:39 8 That was the dirtiest job .

09:14:41 9 Q. You mean you just did tar work ?

09:14:42 10 A. Huh ?

09:14:44 11 Q. You just did the tar work on the
09:14:46 12 road crew?

09:14:46 13 A. Oh, yeah .

09:14:47 14 Q. You didn't pick up the dead dogs
09:14:49 15 and the --

09:14:49 16 A. No, I didn't do that . We traveled
09:14:51 17 the whole county , we'd resurface the roads
09:14:53 18 that -- you know, they'd do the sides of the
09:14:54 19 road , sometimes the center , and then we put
09:14:56 20 gravel on them and roll them . I was on that
09:14:59 21 crew all the time .

09:14:59 22 Q. That was a summer job ?

09:15:01 23 A. Summer job .

09:15:01 24 Q. So each summer in high school and
09:15:04 25 college , you would do that ?

09:15:05 1 A. Yeah .

09:15:05 2 Q. And that was a weekday job , I take
09:15:08 3 it ?

09:15:08 4 A. Five days a week . Yes, sir .

09:15:10 5 Q. All right. You picked up some
09:15:12 6 spending money with that ?

09:15:13 7 A. Oh, yeah .

09:15:14 8 Q. So you testified in the 2011
09:15:18 9 deposition that you did that job from --
09:15:20 10 summers from '47 to '54 ?

09:15:22 11 A. Yes . That's correct .

09:15:24 12 Q. And after that , after high school ,
09:15:33 13 after graduation from the Georgia prep school ,
09:15:36 14 you went to the -- you spent a year at Georgia
09:15:40 15 Tech?

09:15:40 16 A. Yes . That's correct .

09:15:41 17 Q. What year would that have been ?

09:15:43 18 A. That was '49 to '50 .

09:15:46 19 Q. And left Georgia Tech and then
09:15:49 20 came up to --

09:15:50 21 A. Came up to UD . Yes, sir.

09:15:51 22 Q. And entered what , as a sophomore ,
09:15:55 23 whatever credits you had ?

09:15:56 24 A. Well , I was -- I still had -- they
09:15:58 25 were on the quarter system , and I didn't have

09:16:00 1 enough credits to move into my sophomore year
09:16:04 2 complete ly so I had to take about a semester as
09:16:08 3 a freshman and then update it.

09:16:11 4 Q. And where did you live during your
09:16:11 5 college years?

09:16:11 6 A. I lived at 2744 Fairmont Avenue .
09:16:14 7 I lived at home.

09:16:15 8 Q. And then after graduating from
09:16:19 9 college in 1954 --

09:16:20 10 A. Yes . That's correct .

09:16:21 11 Q. -- you -- it looks like the Army
09:16:26 12 came calling ?

09:16:27 13 A. Yep .

09:16:28 14 Q. And you got drafted ?

09:16:30 15 A. Yes .

09:16:30 16 Q. And you were stationed in Germany ,
09:16:32 17 was it?

09:16:32 18 A. Yes . That's correct . Well , Fort
09:16:35 19 Ord, California and Presidio of Monteray and
09:16:38 20 then Germany. Yes, sir.

09:16:39 21 Q. And in the Army from -- if I
09:16:41 22 remember your deposition testimony , October ,
09:16:44 23 1954 ?

09:16:45 24 A. Yes, sir .

09:16:46 25 Q. And discharge d September , 1956 ?

09:16:48 1 A. That is correct .

09:16:50 2 Q. You also made mention that you had
09:16:57 3 some odd jobs in college including bartending ?

09:17:00 4 A. Oh, yeah. I tended bar up at
09:17:06 5 Kremer's . I was a college hand.

09:17:06 6 Q. And then after --

09:17:06 7 UNIDENTIFIED SPEAKER: Larry , the
09:17:08 8 witness is breaking up. We can't hear him on the
09:17:10 9 phone . Can you move it a little closer, the
09:17:13 10 microphone to him?

09:17:15 11 MR. SILVER: We'll try . Okay . Let
09:17:19 12 us know .

09:17:22 13 Q. After -- after the Army , you came
09:17:23 14 back to Dayton ?

09:17:24 15 A. Yes . That's correct . Then I went
09:17:25 16 to Ohio Northern for a year .

09:17:27 17 Q. Law school ?

09:17:28 18 A. Yeah . I gave it a try , but it
09:17:30 19 wasn't my cup of tea .

09:17:32 20 Q. There in Ada , Ohio ?

09:17:35 21 A. Ada , Ohio . Yes, sir .

09:17:38 22 Q. And so that would have been in
09:17:41 23 19 --

09:17:42 24 A. '56 , '57 .

09:17:43 25 Q. Starting in September, '5 --

09:17:46 1 September , '56 and then finishing up in May or
09:17:49 2 so of '57?

09:17:50 3 A. Yeah .

09:17:51 4 Q. Then came back here?

09:17:54 5 A. Came back home . Yes, sir .

09:17:56 6 Q. What did you do when you got back
09:17:58 7 home ?

09:17:58 8 A. I used to clerk auctions for an
09:18:00 9 auctioneer when I was in high school sometimes
09:18:03 10 and in college . And then I got a real estate
09:18:07 11 license . He was a real estate broker besides
09:18:12 12 an auctioneer . Forrest Martin was his name .
09:18:14 13 They were out in Centerville. Martin & Martin.
09:18:14 14 And I'd clerk auctions and I'd sell a little
09:18:17 15 real estate . I was working my way into that .
09:18:19 16 He was primarily in the auction business .

09:18:23 17 And then I went with a fellow by the
09:18:25 18 name of Bill Gilmore for about a year and did --
09:18:28 19 started my commercial industrial . Then I went by
09:18:31 20 myself and had my own business .

09:18:35 21 Q. So you started with a fellow name
09:18:37 22 Bill Gilmore when you came back to Dayton ?

09:18:39 23 A. When I went into real estate
09:18:41 24 full-time . Yes, sir. I was just
09:18:43 25 auction eering . I was clerking for the

09:18:45 1 auctioneer , trying to sell real estate , too ,
09:18:47 2 but I wasn't doing too good at either one . I
09:18:47 3 was doing okay at clerking but wasn't too good
09:18:52 4 at selling real estate so I went with a realtor
09:18:53 5 full-time , you know, a full-time realtor .

09:18:56 6 Q. Do you remember what year and
09:18:58 7 month you got your real estate license ?

09:19:00 8 A. I got my license in -- I think I
09:19:05 9 got it in '57 when I came out of Ohio Northern
09:19:11 10 when I went with the auctioneer .

09:19:12 11 Q. You mentioned that you worked with
09:19:17 12 a couple of fellows , Larry Stein , Stan Heiberg .
09:19:24 13 Did I get that right ? Larry Stein in real
09:19:27 14 estate , you worked with a fellow in --

09:19:29 15 A. Well , I just had a couple
09:19:31 16 transactions . I didn't work for him . Larry
09:19:33 17 and I used to work together . Well , we'd work
09:19:36 18 sometimes -- we'd find we were working on the
09:19:39 19 same things so we'd just work together and get
09:19:41 20 it done, you know , instead of arguing with each
09:19:44 21 other and fighting and getting in trouble .

09:19:46 22 Q. You also mentioned you worked out
09:19:49 23 of the Reibold building --

09:19:50 24 A. Reibold building .

09:19:52 25 Q. -- in downtown Dayton ?

09:19:54 1 A. Yes .

09:19:54 2 Q. And that was for how long ?

09:19:55 3 A. Well, I was down there -- well , my
09:19:58 4 dad -- I was -- I got -- I shared an office
09:19:59 5 with my father , one of his offices there , and I
09:20:03 6 left -- we left there in '60 .

09:20:06 7 He built a wing on one of the
09:20:08 8 buildings going into the dump down there for an
09:20:10 9 office . He and his partner , Mr. Grillot.

09:20:10 10 Q. Right.

09:20:13 11 A. And they built a wing down there
09:20:14 12 and they had four offices and I used one of
09:20:17 13 theirs .

09:20:17 14 Q. So you moved from the Reibold
09:20:19 15 building -- did I say that right ?

09:20:24 16 A. Reibold building .

09:20:25 17 Q. Reibold building. Over to -- I
09:20:26 18 guess , at that point , was it called South
09:20:28 19 Broad way ?

09:20:29 20 A. South Broad way then , yes .

09:20:30 21 Q. Right at the dump ?

09:20:31 22 A. Right . Yeah. Right as you go --
09:20:33 23 the main entrance to the dump went right by my
09:20:37 24 office there .

09:20:37 25 Q. And your dad , you said and what ,

09:20:42 1 Cyril Grillot --

09:20:42 2 A. Yes . That's correct .

09:20:43 3 Q. -- built an addition to an
09:20:45 4 industrial building ?

09:20:46 5 A. Yeah . They added a wing on the
09:20:48 6 industrial building . Well, they added two
09:20:53 7 wings , one on each side. The company that
09:20:54 8 leased the other -- leased part of that main
09:20:56 9 industrial building wanted an office so they
09:20:57 10 built that over there .

09:20:58 11 Q. And who occupied the offices , the
09:21:01 12 four offices , one of which you moved into ?

09:21:04 13 A. Well , there was Mr. Grillot , Cyril
09:21:07 14 Grillot , my father , and then I had a couple of
09:21:10 15 fellows that worked for me . They just had
09:21:13 16 their license with me , Pat Maloney and Lou
09:21:17 17 Solvary . They were building homes on scattered
09:21:20 18 lots.

09:21:20 19 Q. Right. Lou Solvary, is he still
09:21:21 20 alive ?

09:21:22 21 A. No. He's deceased .

09:21:23 22 Q. What about Pat Maloney ?

09:21:25 23 A. Pat Maloney is still alive . He's
09:21:27 24 up in Troy .

09:21:29 25 Q. And how long did Pat work at the

09:21:31 1 office on South Broad way ?

09:21:32 2 A. He really didn't spend a lot of
09:21:34 3 time there . They just -- Lou needed a place
09:21:36 4 for really a mail drop and I said we had this
09:21:39 5 spare office and I said you can use it . They
09:21:41 6 both had real estate licenses , but -- and I
09:21:44 7 held their license for them -- but Pat just
09:21:46 8 handled the sales of Lou 's houses . Most of the
09:21:49 9 time they were out looking for scattered lots .
09:21:52 10 They started building out in Drexel even .
09:21:56 11 They'd build package homes . They stayed about
09:21:58 12 a year and a half maybe , but they weren't in
09:22:03 13 the office a lot .

09:22:03 14 Q. A year and a half in that office
09:22:05 15 next to where you were ?

09:22:06 16 A. Yeah . They used it about a year
09:22:09 17 and a half and then they moved .

09:22:10 18 Q. Okay . And you worked out of that
09:22:12 19 office at the entrance to the dump from 1960 to
09:22:18 20 1966 ; is that right ?

09:22:20 21 A. Yes . That's correct .

09:22:21 22 Q. And then after that , you moved to
09:22:27 23 Bellbrook ?

09:22:27 24 A. Yes . That's correct .

09:22:28 25 Q. And who were you working for in

09:22:30 1 Bellbrook ?

09:22:30 2 A. Myself .

09:22:31 3 Q. Why did you make the move from
09:22:33 4 South Broad way to Bell brook ?

09:22:35 5 A. Well , I lived on a farm out in
09:22:37 6 Sugarcreek Township, and I bought a building
09:22:39 7 down in Bellbrook . It was a lot closer than
09:22:42 8 South Broad way , I'll tell you . So I just
09:22:44 9 worked down there .

09:22:45 10 Q. And I remember you saying you
09:22:47 11 bought a farm pretty -- pretty what, around
09:22:50 12 when you were --

09:22:51 13 A. '59 .

09:22:52 14 Q. Oh, in '59 ?

09:22:53 15 A. Yeah. Bought it in December of
09:22:55 16 '59.

09:22:55 17 Q. And then you stayed with -- stayed
09:22:58 18 in Bellbrook until '73 or so ?

09:23:01 19 A. Yes . That's correct . And then I
09:23:02 20 went with Heritage . I knew the fellows that
09:23:05 21 started Heritage . I went to high school with a
09:23:07 22 couple of them at Chaminade.

09:23:08 23 Q. And that pretty much brings us up
09:23:13 24 to date or until --

09:23:14 25 A. Yeah. I was --

09:23:14 1 Q. -- at least until you said 2002?

09:23:14 2 A. Yeah.

09:23:15 3 Q. And then did some work with them
09:23:17 4 for a few more years after, was it?

09:23:20 5 A. Oh, I stayed with Heritage until
09:23:23 6 2011. We sold it in 2001, but I stayed. One
09:23:27 7 of our younger partners bought it. And the
09:23:29 8 manager who used to be with Nor west Mortgage,
09:23:33 9 they bought it from us and I stayed. A couple
09:23:36 10 of my partners left. And Jack Fitzgerald and
09:23:43 11 myself stayed. Denny Graff. And then
09:23:47 12 Fitzgerald passed away. And then Graff said he
09:23:49 13 was going to retire. And I said well, I'm
09:23:52 14 going on, so I went to Mark Fornes in 2011.

09:23:56 15 I was going to hang my own broker's
09:23:59 16 license again, but I thought then I had to go out
09:24:01 17 and get an office and everything. Mark and I had
09:24:03 18 been friend for years and we're trustees for that
09:24:07 19 South Dayton Dump Remediation Trust and so we
09:24:09 20 just -- he just said come with me, it's easier.
09:24:12 21 And at the time he was in a building that my
09:24:14 22 stepmother owns. So we just went there.

09:24:16 23 Q. Now, I just want to talk a little
09:24:22 24 bit about your experience at the dump, I don't
09:24:24 25 want to say working at the dump, but, you know,

09:24:25 1 the activities you had there .

09:24:27 2 So let me start , just first of all ,
09:24:34 3 what do you consider the correct name for the dump
09:24:36 4 to be ?

09:24:36 5 A. It was the South Dayton Dump .

09:24:38 6 Q. And was it ever -- was the
09:24:41 7 business of the -- well , I understand there was
09:24:45 8 the ownership of the dump . Who owned the dump ?

09:24:47 9 A. Actually , my father and Cyril
09:24:49 10 Grillot owned the ground , and they leased it to
09:24:56 11 Cyril's two brothers Alcine and Kenny .

09:24:57 12 Q. Just from reading the prior deps ,
09:25:00 13 prior depositions , I wasn't quite clear when
09:25:02 14 the leasing began , whether it began after
09:25:06 15 the --

09:25:06 16 A. Well , they started it after --
09:25:10 17 when Alcine came back from World War II . He
09:25:13 18 came back and that's when they were fiddling
09:25:16 19 around with it and Cyril -- Cyril was an
09:25:20 20 amateur of the fly ash that DP&L had , he
09:25:21 21 figured there had to be some use for it across
09:25:25 22 the road there , but -- but they decided they
09:25:26 23 couldn't do anything about it . So that's when
09:25:30 24 they started the dump , Alcine started the dump .

09:25:32 25 Q. So right after World War II . When

09:25:35 1 did Alcine come back? Do you remember what
09:25:36 2 year that was ?

09:25:37 3 A. '45, I imagine. Something like
09:25:38 4 that. When it was over. '46 .

09:25:41 5 Q. And did they start the leasing
09:25:43 6 arrangement at that point in time?

09:25:45 7 A. (Witness nods head up and down.)

09:25:47 8 Q. Was it a -- was there a written
09:25:51 9 lease , if you know ?

09:25:52 10 A. I think there was at one time , but
09:25:55 11 it probably just ran on and they never change d
09:25:57 12 it.

09:25:57 13 Q. Maybe never renewed it?

09:25:59 14 A. Never renewed it. It just ran and
09:26:03 15 that was it. Though the liability -- some of
09:26:07 16 the liability was Alcine 's, wasn't it?

09:26:09 17 Q. That's a different issue .

09:26:12 18 A. Oh, okay .

09:26:13 19 Q. We'll leave that one to the
09:26:16 20 lawyers .

09:26:17 21 A. Oh, I'm sorry .

09:26:17 22 Q. All right. Do you remember the
09:26:20 23 dump ever being referred to as Grillot 's dump ?

09:26:25 24 A. No. I don't know what they ever
09:26:27 25 referred to it as because I always knew it as

09:26:32 1 the South Dayton Dump . In fact, we had a
09:26:34 2 sailboat -- friends of mine , we used to party
09:26:38 3 down there and they'd say where do you keep
09:26:43 4 your boat and we'd say the South Dayton Yacht
09:26:46 5 Club.

09:26:46 6 Q. Or how about Broadway Dump? Did
09:26:49 7 you ever hear that?

09:26:49 8 A. They probably referred to it in
09:26:52 9 just a nomenclature way because that's where it
09:26:53 10 was located , you know .

09:26:55 11 Q. Have you ever heard the term
09:26:59 12 Moraine Recycling ?

09:27:00 13 A. Moraine Recycling . Unless that
09:27:05 14 was Rome y Schweiterman 's operation over on
09:27:08 15 Cardington Road . I never -- unless -- unless
09:27:11 16 Alcine called it that afterwards . See , when I
09:27:13 17 left there in '66 -- I didn't use that office
09:27:20 18 after about '64 -- but when I left there , I --
09:27:24 19 I didn't go over very much then . Whatever
09:27:28 20 Alcine was doing , I didn't know . I stayed out
09:27:31 21 of the thing .

09:27:32 22 Q. Now , you say you didn't use the
09:27:34 23 office after '64 . What office did you use
09:27:37 24 after '64?

09:27:38 25 A. I had an office at 46 East

09:27:41 1 Franklin Street in Bellbrook , Ohio .

09:27:42 2 Q. So you started Bellbrook in '64 ,
09:27:45 3 not '66 ?

09:27:45 4 A. Well , I used both offices then .
09:27:48 5 I -- I -- I had a lady that worked for me that
09:27:50 6 did commercial and industrial at the time and
09:27:53 7 so I left her at Springboro then . And then
09:27:59 8 when I shut my office down , she got out of real
09:28:03 9 estate .

09:28:03 10 Q. She left the practice ?

09:28:05 11 A. Right .

09:28:06 12 Q. All right . Now , you mentioned in
09:28:12 13 one of the early deposition s that your first
09:28:15 14 recall of being at the South Dayton Dump was
09:28:18 15 around five years old in 1937 ?

09:28:20 16 A. Yes . My father -- what had
09:28:22 17 happened is my father bought a farm at
09:28:25 18 sheriff's auction back there behind --
09:28:28 19 Mr. Grillot had the land where South Broad way
09:28:32 20 Sand & Gravel was , and he -- he had fireworks .
09:28:36 21 So he sold fireworks and Christmas trees and
09:28:40 22 stuff like that .

09:28:40 23 Q. That was Cyril ?

09:28:41 24 A. Cyril. Yeah. And then he had
09:28:43 25 these tar paper shacks, they were about ten by

09:28:45 1 ten, he'd mount them on fifty gallon drums ,
09:28:48 2 he'd sit them out in the field there, and every
09:28:49 3 once in a while the heat or humidity or
09:28:52 4 something would blow them up. So he was afraid
09:28:54 5 the county -- my dad was his attorney . He was
09:28:57 6 afraid the county would get after him and they
09:28:59 7 were friends. And so Dad bought this farm at
09:29:03 8 sheriff's auction back there . It was Dunson
09:29:05 9 farm . It was back there on the river .

09:29:07 10 And the only way into it -- he got --
09:29:09 11 he got a pretty good price on it because there was
09:29:11 12 no front age to it . It had an easement where DP&L
09:29:14 13 had big lines going back there , the corner of East
09:29:19 14 River Road and -- and South Broadway or Springboro
09:29:21 15 or Dryden or whatever they call it.

09:29:23 16 Q. Do you remember how many acres the
09:29:26 17 farm was ?

09:29:26 18 A. There was about seventy acres in
09:29:29 19 that farm .

09:29:29 20 Q. And did that farm eventually
09:29:31 21 become part of the land for the dump ?

09:29:33 22 A. Well , the front part did . What
09:29:36 23 happened , over the years , when the conservancy
09:29:39 24 had built the levy down across South Broadway,
09:29:44 25 at the bridge , the river makes a sharp

09:29:46 1 left-hand turn to the south , and they took it
09:29:48 2 around that curve but they didn't build it all
09:29:51 3 the way down because that farm was there when
09:29:54 4 they put that levy in , you know. The
09:29:55 5 conservancy said that farm actually ran to the
09:29:58 6 river .

09:29:59 7 But then later on , the conservancy
09:30:02 8 took part of that ground and they built the levy
09:30:05 9 on down south . They took the part near the river .
09:30:08 10 There's a bike path on -- where the levy is now
09:30:11 11 and there's still ground on the other side of the
09:30:14 12 river -- or on the other side of the bike path , on
09:30:18 13 the levy , that was part of this farm .

09:30:20 14 Q. Uh-huh. And that was taken by
09:30:21 15 imminent domain ?

09:30:23 16 A. Yes . They took it , the
09:30:24 17 conservancy. In fact , the conservancy still
09:30:26 18 owns some property south of this -- the dump ,
09:30:29 19 the old dump and the lake down there , the
09:30:31 20 gravel pit . There was two gravel pits there .

09:30:37 21 Q. Okay. Then your prior testimony ,
09:30:38 22 you said in about 1947 , you were fifteen , is
09:30:41 23 when you started picking scrap at the dump ?

09:30:45 24 A. Yeah . We used to go back . And I
09:30:47 25 did it on Saturdays , you know , I'd go down and

09:30:51 1 pick up a load of change . They didn't pay me
09:30:54 2 much , but it was better than nothing .

09:30:55 3 Q. And who would have hired -- who
09:30:58 4 hired you ? Was it Alcine ?

09:30:59 5 A. No . No . My dad and Cyril sent me
09:31:02 6 back there . My dad -- I never really -- I
09:31:05 7 picked , but I never worked for Alcine . They
09:31:07 8 had some independent pickers that used to pick
09:31:10 9 scrap iron and , you know , when they took
09:31:13 10 household goods and paper stuff , you know ,
09:31:17 11 cardboard boxes and stuff like that , they'd
09:31:20 12 pick them and they'd sell them . But they had
09:31:23 13 about three or four guys that worked there off
09:31:25 14 and on pretty regular ly . They were just
09:31:29 15 itinerate people .

09:31:30 16 Q. So you said we . You and your
09:31:32 17 brother would go ?

09:31:32 18 A. Well , my brother wouldn't go . He
09:31:34 19 didn't go until he was older .

09:31:34 20 Q. Uh-huh.

09:31:36 21 A. My dad -- my dad couldn't get him
09:31:39 22 to work too much .

09:31:39 23 Q. So you went with your dad ?

09:31:41 24 A. Huh ?

09:31:42 25 Q. You would go to the dump with your

09:31:45 1 dad on Saturday s?

09:31:45 2 A. Oh, we'd get a ride down there .

09:31:49 3 Yeah. If he was going down there before he had
09:31:50 4 his office down there , he'd drop us off and
09:31:54 5 pick us up .

09:31:55 6 Q. Was there anyone else that would
09:31:56 7 go with you?

09:31:56 8 A. No , not really .

09:31:57 9 Q. So it was just your dad bringing
09:31:59 10 you ?

09:31:59 11 A. Yeah . He'd drop me off down
09:32:02 12 there .

09:32:02 13 Q. Okay.

09:32:02 14 A. Cyril was usually down there .

09:32:04 15 Q. Okay. Now, you testified that you
09:32:05 16 would occasionally go on Sundays as well ?

09:32:09 17 A. Once in a while . Yes.

09:32:10 18 Q. What about after school , during
09:32:12 19 the week ?

09:32:12 20 A. No .

09:32:12 21 Q. So it was a weekend thing ?

09:32:15 22 A. It was just -- just a weekend ,
09:32:16 23 part-time job or pick-up, you know .

09:32:18 24 Q. Okay. About how much money would
09:32:20 25 you make a week or, you know, when you were

09:32:21 1 there for a day, what would you make?

09:32:24 2 A. Well, geez, I don't know. Maybe
09:32:27 3 twenty dollars. Maybe fifteen. I don't know.
09:32:30 4 Ten. Just according to what I got and what I
09:32:32 5 was able to sell to Patterson Iron & Metal,
09:32:36 6 you know, Mr. Patterson up there on -- off of
09:32:44 7 Fifth Street behind Borden's Deli there.

09:32:45 8 Q. And this would be through out the
09:32:47 9 school year in the summer?

09:32:48 10 A. No, I didn't do it in the summer.
09:32:50 11 It was just during the school year. Usually
09:32:54 12 just in the fall and spring. I didn't go over
09:32:57 13 in the wintertime.

09:32:58 14 Q. Okay. Now -- and this went on,
09:33:03 15 other than when you were in Georgia, you
09:33:05 16 continued to do this?

09:33:06 17 A. No. I -- really I didn't from
09:33:08 18 about my -- oh, I guess about my junior year in
09:33:13 19 college, I had another job. I worked for
09:33:16 20 Rike's, and I worked for Kremer's tending bar
09:33:18 21 after I was twenty-one.

09:33:19 22 Q. You worked for Kremer. And who
09:33:21 23 else?

09:33:21 24 A. Rike's. Rike-Kumler department
09:33:25 25 store.

09:33:25 1 Q. Oh, I see.

09:33:28 2 A. The Federated store .

09:33:28 3 Q. So by the time you were a junior
09:33:29 4 in college, you stopped picking at the --

09:33:29 5 A. I got educated . I had a
09:33:33 6 white -collar job .

09:33:33 7 Q. All right. So your period of time
09:33:35 8 is from when you were fifteen years old until
09:33:37 9 you were a junior in college ?

09:33:39 10 A. Yeah . Well , about then . Yeah . I
09:33:43 11 went back -- yeah, in college . Yeah . But I
09:33:45 12 didn't go back after my junior year .

09:33:49 13 Q. You didn't go back to the dump to
09:33:51 14 pick ?

09:33:51 15 A. No . I had a better job .

09:33:53 16 Q. Now , you had testified that in
09:33:59 17 1955 , because of some sort of injunction --

09:34:03 18 A. Yes . The City of Dayton got an
09:34:05 19 injunction against them because mysteriously
09:34:10 20 that dump would catch on fire every morning
09:34:11 21 about 2:00 every morning and all the smoke
09:34:14 22 would come right up the river into the city of
09:34:17 23 Dayton . So they got an injunction. They
09:34:20 24 stopped them from burning .

09:34:20 25 Q. Did you ever solve the mystery ?

09:34:20 1 A. Please?

09:34:20 2 Q. Did you ever solve the mystery?

09:34:24 3 A. No. I knew who the cause of it
09:34:26 4 was , but it was none of my business so I didn't
09:34:29 5 do anything .

09:34:30 6 Q. So what -- what was set on fire ,
09:34:34 7 all of the trash that they had accumulated for
09:34:37 8 the day ?

09:34:37 9 A. The trash for the day . And they
09:34:40 10 took some -- had some tires they burned . They
09:34:43 11 were really nasty . They'd get real black and
09:34:46 12 come up that river . Our prevailing windows are
09:34:49 13 out of the southwest , and they'd come right up
09:34:52 14 that river and right into the city of Dayton .

09:34:54 15 Q. Why would they add tires ? Do you
09:34:58 16 know?

09:34:58 17 A. I don't know . Household tires .
09:35:00 18 Somebody dropped them -- you know, somebody
09:35:02 19 dropped them off . They didn't have a regular
09:35:05 20 tire distributor . You know, maybe -- maybe a
09:35:06 21 service station , make a one stop , had to have
09:35:08 22 some tires , and just dump them .

09:35:10 23 Q. And up until that point , was the
09:35:13 24 South Dayton Dump accepting , I guess , what they
09:35:16 25 call municipal waste , household trash ?

09:35:19 1 A. Household trash . They'd take
09:35:22 2 anything . Yeah .

09:35:22 3 Q. And were there regular household
09:35:27 4 trash haulers that would come into the dump ?

09:35:29 5 A. No , not really . It was just , you
09:35:31 6 know , somebody that had trash and wanted to get
09:35:34 7 rid of it , you know , was really what it is.

09:35:36 8 Sometimes they'd come in with a pickup upload ,
09:35:39 9 sometimes they'd have a trunk load . It was
09:35:41 10 just people getting rid of trash is all it was .

09:35:44 11 I think they charge d them fifty cents
09:35:46 12 or something like that . I don't know . Kenny ,
09:35:49 13 Alcine's brother , collected the money for that .
09:35:51 14 And then the regular ones were really paid by the
09:35:55 15 month , I think . I don't know . My dad used to get
09:35:59 16 the -- get the -- when he'd do his taxes , I'd see
09:36:04 17 some of them there . They got a regular fee from
09:36:07 18 Alcine . They paid a regular monthly fee . And
09:36:11 19 then some of the over age , if he had some of the
09:36:13 20 companies that would dump more , they'd get a
09:36:16 21 percent age of that . He'd pay a percent age of that
09:36:19 22 as an over age , you know , and it was just --

09:36:22 23 MR. MUSTO: I'm sorry. You're kind
09:36:23 24 of trailing off .

09:36:25 25 THE WITNESS: I'm sorry . I got you a

09:36:27 1 little cold here .

09:36:30 2 There was a little over age paid in
09:36:33 3 regard to the lease price for the dump with some
09:36:36 4 of the regular customers that came in all the
09:36:38 5 time . And when they'd dump so much , then Alcine
09:36:41 6 would have to tell them how much they dumped ,
09:36:45 7 Kenny would , but how many times they were in , you
09:36:47 8 know , and they collected and then they'd got an
09:36:49 9 over age . The owners of the land would get an
09:36:51 10 over age on this according to the lease , you know.
09:36:53 11 And that 's where I saw some of the company names ,
09:36:56 12 when they would enter the overage , not just what
09:36:59 13 came from the lease , original lease , but the
09:37:02 14 over age , they'd entered what company had to pay
09:37:06 15 ove rage .

09:37:07 16 Q. Okay .

09:37:07 17 A. So that's where I picked up some
09:37:07 18 of it.

09:37:12 19 Q. Okay. So this is where you saw
09:37:14 20 some documentation of the over age?

09:37:16 21 A. Very little . I mean , just at tax
09:37:19 22 time , you know , in March .

09:37:20 23 Q. Uh-huh .

09:37:22 24 A. I'd help him do his books .

09:37:24 25 Q. You'd help do the books to prepare

09:37:27 1 for the taxes ?

09:37:27 2 A. Just my father's . Yes. And

09:37:29 3 Grillot and Boesch . Yeah. I 'd just run the
09:37:32 4 adding machine .

09:37:32 5 Q. So you'd see some of the
09:37:34 6 document ation on the extra money they were
09:37:36 7 given, the over age is what you call it?

09:37:38 8 A. Well , they had to declare where
09:37:40 9 the money came from , yeah, on the over age .
09:37:42 10 Yeah .

09:37:42 11 Q. Uh-huh. Okay.

09:37:43 12 A. Yes .

09:37:43 13 Q. Now , you said that the over age was
09:37:46 14 real ly tied to the regular customers --

09:37:48 15 A. Yes, sir .

09:37:48 16 Q. -- of the dump ?

09:37:49 17 A. Yeah .

09:37:51 18 Q. You mentioned that after the
09:37:55 19 injunction , which you said was in 1955?

09:37:58 20 A. I was in the service , but it was
09:38:00 21 served in the summer of 1955, they stopped it.
09:38:03 22 I don't know what time .

09:38:04 23 Q. Okay. Then the dump continued to
09:38:07 24 take what you called solid fill ?

09:38:11 25 A. Yes .

09:38:11 1 Q. What do you mean by solid fill ?

09:38:14 2 A. Well, like if they dig a
09:38:15 3 foundation for a basement , they'd take a
09:38:18 4 basement , you know, and contractors would have
09:38:19 5 that , they'd bring it over and dump it. And a
09:38:22 6 lot of times , when they were doing road work ,
09:38:25 7 you know , if they had a contract on a road and
09:38:27 8 they had to scrape it down , take it down , you
09:38:30 9 know , the over burden , they'd bring that down .
09:38:33 10 It was all solid . I mean, there would be some
09:38:37 11 rocks in it, things , too . Sometimes if they
09:38:40 12 tear a house down , and they had an old house
09:38:42 13 like there was some around west Dayton and east
09:38:46 14 Dayton there that had stone foundations , they'd
09:38:50 15 bring that stone down and dump it. They had to
09:38:53 16 get rid of it someplace , the contractors did .
09:38:56 17 Those were just individuals that would come in
09:38:58 18 and dump .

09:38:59 19 Q. And had the dump accepted solid
09:39:02 20 fill prior to the injunction ?

09:39:03 21 A. Oh, yeah . They took anything .
09:39:05 22 Anything and everything .

09:39:06 23 Q. And the customers , the larger
09:39:13 24 customers , continued -- they weren't affected
09:39:16 25 by the injunction , were they ?

09:39:17 1 A. No .

09:39:18 2 Q. So larger customers brought in --

09:39:20 3 A. The injunction was against
09:39:22 4 burning . They couldn't burn the dump . That's
09:39:25 5 exactly what it -- it wasn't a burning dump
09:39:29 6 after that .

09:39:30 7 Q. So the dump stopped accepting
09:39:32 8 household waste ?

09:39:33 9 A. Yeah .

09:39:33 10 Q. Because they couldn't burn it?

09:39:35 11 A. Because they couldn't burn it.
09:39:37 12 They wouldn't take a lot of the household
09:39:39 13 waste .

09:39:40 14 Q. Now, you had mentioned in the last
09:39:47 15 deposition that for a time , all of the general
09:39:50 16 manufacturers used South Dayton Dump in the
09:39:53 17 area .

09:39:54 18 A. Well , not all of them . You know ,
09:39:56 19 there was Powell Road , there was Blaylock's ,
09:40:00 20 there was Cardington . I mean , they all didn't
09:40:03 21 use them . But they had been the oldest dump
09:40:08 22 south . And some of the people who were used to
09:40:10 23 coming to them kept coming to them . Yes.

09:40:12 24 Q. South Dayton Dump was the oldest
09:40:15 25 dump south ?

09:40:15 1 A. Well , they had the Charlie Cinn
09:40:18 2 Dump , but that had been closed years ago , back
09:40:21 3 in the ' 20 s .

09:40:22 4 Q. This was the dump that was --

09:40:24 5 A. On the north end of this property .

09:40:27 6 Q. Charlie Cinn, C I N N?

09:40:30 7 A. C I N N. Cinn. Yeah.

09:40:33 8 Q. Did your dad and Cyril eventually
09:40:35 9 buy that property , Cinn 's Dump?

09:40:37 10 A. Yes . They bought that property on
09:40:40 11 the north end . Yes, sir .

09:40:42 12 MS. KAUFMAN: I can't hear . I'm
09:40:42 13 sorry.

09:40:46 14 THE WITNESS: Yes . They purchased
09:40:47 15 that property on the north end of this property ,
09:40:51 16 up by the old Broadway bridge up there, coming
09:40:54 17 south , across from DP&L there where Valley
09:40:58 18 Asphalt's entrance is now . Yeah, they bought
09:40:59 19 that . Mostly it was a lot -- well, actually , that
09:41:02 20 building was Fleming Rainey, the GMC truck dealer,
09:41:05 21 where B&G is now, and they had that lot where they
09:41:09 22 stored trucks , you know, that they were working on
09:41:10 23 and selling and stuff like that .

09:41:12 24 Q. Now , you also testified that while
09:41:43 25 you were in college at the University of

09:41:45 1 Dayton , that some afternoons in college , during
09:41:48 2 the Korean War , you'd come over to the dump to
09:41:51 3 pick scrap .

09:41:52 4 A. Well , I'd just go over to see if
09:41:54 5 they were running the conveyor thing , you know,
09:41:57 6 the magnetic conveyor thing, if they were going
09:41:58 7 to be running on the weekend . I didn't really
09:42:00 8 do much in the way of work over there .

09:42:02 9 Q. On the weekdays ?

09:42:04 10 A. On the weekdays , no . I'd just go
09:42:07 11 over and see what was going on . Then I'd go
09:42:10 12 back . Because I wasn't that far from
09:42:13 13 University of Dayton to run over there , see
09:42:16 14 what they were doing on the way home , you know.

09:42:18 15 Q. Now, just so I'm clear , when you
09:42:20 16 talk about running the conveyor belt , who --
09:42:22 17 was that part of the operation of the dump or
09:42:24 18 was that part of Broadway Sand & Gravel ?

09:42:27 19 A. Well, that was part of the
09:42:29 20 operation of the dump . Cyril came up with that
09:42:34 21 idea , Grillot , mining that . The scrap iron got
09:42:37 22 pretty high during the Korean War , whatever you
09:42:42 23 want to call it , police action .

09:42:43 24 Q. The price of scrap ?

09:42:45 25 A. The prices were up so they --

09:42:48 1 Cyril picked this idea up down in Miami
09:42:51 2 someplace , Florida . He was messing around down
09:42:54 3 there and he saw this conveyor belt with a
09:42:56 4 magnetic overlap . He came up and talked to
09:43:00 5 Alcine and then Alcine set it up . Alcine and
09:43:03 6 Kenny . Yeah . Yes .

09:43:04 7 Q. So would all of the trash coming
09:43:08 8 into the dump go through the conveyor belt with
09:43:11 9 the magnet pulling out the metal ?

09:43:13 10 A. No , they didn't -- what they did ,
09:43:15 11 they set that conveyor belt up to mine the old
09:43:18 12 dump and part of the new dump where scrap --
09:43:21 13 where they knew metal was , where they knew --
09:43:25 14 scrap metal . There was some car bodies that
09:43:27 15 had been dumped down there years ago . There
09:43:30 16 were some drums , fifty -gallon drums , you know ,
09:43:33 17 and they were mining for that . And that was
09:43:35 18 really at the north end coming south from the
09:43:38 19 Broadway bridge across from DP&L . They dug a
09:43:43 20 big trench down through there . And , of course ,
09:43:46 21 Broadway , they use their trucks and a steam
09:43:48 22 shovel .

09:43:48 23 Q. They used Broadway Sand & Gravel 's
09:43:53 24 steam shovel and trucks ?

09:43:54 25 A. Oh , they'd pay them for them but

09:43:54 1 they'd have them do them because a lot of times
09:43:55 2 in the wintertime , they weren't too busy , you
09:43:58 3 know, so they'd use the trucks .

09:44:00 4 Q. And who ran this operation ,
09:44:02 5 Alcine ?

09:44:02 6 A. Alcine ran it. And , of course ,
09:44:06 7 Cyril oversaw it because it was his baby . But
09:44:08 8 that was just his -- that had nothing to do
09:44:11 9 with the leases or anything .

09:44:12 10 Q. Now , speaking of drums , do you
09:44:16 11 know whether drum waste ever came into the
09:44:19 12 site ?

09:44:19 13 A. Not -- not per se . There was a
09:44:25 14 company that leased a building up at the north
09:44:28 15 end where you went into Valley Asphalt there ,
09:44:34 16 Ottoson Solvents. They'd re -- refurbish
09:44:35 17 drums . You know, they'd get drums and clean
09:44:36 18 them up and sand them down and paint them again
09:44:39 19 and sell them .

09:44:40 20 Q. Reconditioned ?

09:44:41 21 A. Pardon ?

09:44:42 22 Q. Reconditioned ?

09:44:42 23 A. Reconditioned .

09:44:43 24 Q. What about drums of waste coming
09:44:48 25 to the South Dayton Dump operation itself ?

09:44:50 1 A. The only time that I ever remember
09:44:53 2 any drums coming in was from the Frigidaire
09:44:58 3 plant . They'd have shavings in them where they
09:45:03 4 were fine tuning some of their products or
09:45:06 5 something and there would be metal shavings.
09:45:07 6 And that's the only thing that I remember that
09:45:09 7 came in in drums . That wasn't a large amount .

09:45:11 8 Q. What about drums or other
09:45:15 9 contain ers with liquids in them ?

09:45:16 10 A. No , they didn't.

09:45:17 11 Q. You don't have any memory of that ?

09:45:18 12 A. No memory of that . No, sir .

09:45:21 13 Q. All right . I'm going to ask you
09:45:24 14 about some companies or entities .

09:45:32 15 What about Montgomery County ? Did
09:45:33 16 Montgomery County ever bring any waste to the
09:45:36 17 site ?

09:45:36 18 A. Not to my knowledge .

09:45:37 19 Q. Okay. You mentioned in one of
09:45:41 20 your prior deposition s seeing yellow trucks
09:45:44 21 from Montgomery County coming to the dump ?

09:45:49 22 A. I mentioned that ? I can't think
09:45:57 23 what they 'd have that they would dump there .
09:46:00 24 Solid fill maybe when they had some over
09:46:01 25 load -- turned roads . That's the only time.

09:46:01 1 Maybe that's what I was thinking of. You know ,
09:46:03 2 when they cut the roads down or cut a new road
09:46:06 3 through , cut the berm or resurface it, you
09:46:09 4 know .

09:46:09 5 Q. And your road crew job was for the
09:46:12 6 County , right ?

09:46:13 7 A. Please?

09:46:14 8 Q. When you did the road crew work ,
09:46:17 9 was the County your employer ?

09:46:18 10 A. Yes, sir . Montgomery County
09:46:20 11 Engineer s.

09:46:20 12 Q. And do you remember them having
09:46:23 13 yellow trucks ?

09:46:24 14 A. Oh, yeah . That's what they had at
09:46:25 15 the time .

09:46:26 16 Q. Okay. You mentioned at one of the
09:46:31 17 deps, in the 20 11 deposition , a foundry , Sam
09:46:38 18 Finn Foundry .

09:46:39 19 MS. KAUFMAN: A what ?

09:46:39 20 MR. SILVER: Sam Finn Foundry.

09:46:41 21 THE WITNESS: Oh, they had a
09:46:44 22 foundry up -- it was up on Cincinnati Street. And
09:46:47 23 I knew the fellow that manage d it, Dick Earman .
09:46:51 24 And they'd have some foundry cores , you know ,
09:46:57 25 that -- I can't remember what the name of the

09:46:59 1 company was . He was a brother to Esther brook ,
09:47:05 2 Finn & McGee . Sam Finn was a brother to that law
09:47:08 3 firm .

09:47:08 4 Q. Oh, so Sam Finn was one of the
09:47:10 5 what , owners or --

09:47:12 6 A. He had this foundry up there .

09:47:14 7 Q. But you don't remember his
09:47:16 8 company 's name ?

09:47:17 9 A. I don't remember whether it was
09:47:22 10 Mallivar -- wait a minute. I don't know what
09:47:23 11 the name of -- I can't remember the name of the
09:47:24 12 company , but it was up on Cincinnati
09:47:28 13 Street in West Dayton there .

09:47:28 14 Q. And you mentioned a fellow you
09:47:32 15 knew there named Dick Earman ?

09:47:35 16 A. Earman . E A R M A N .

09:47:39 17 Q. Still alive ?

09:47:43 18 A. No. He's dead. He died in
09:47:44 19 Pennsylvania about a year ago .

09:47:45 20 Q. And Sam Finn , F I N N ?

09:47:48 21 A. Yes . Yeah. He was a brother to
09:47:50 22 the partner in Ester brook , Finn & McGee .
09:47:55 23 That's how I remember it .

09:47:56 24 Q. Do you know if Sam Finn is still
09:47:58 25 alive ?

09:47:59 1 A. No. He's not still alive. Most
09:48:01 2 of these guys would be a hundred and some if
09:48:05 3 they were still alive, I hate to tell you.

09:48:07 4 Q. Yeah. That's an issue with this
09:48:10 5 case. So Cincinnati Street, did you say?

09:48:13 6 A. Their place was on Cincinnati
09:48:18 7 Street, north up --

09:48:20 8 Q. West Dayton? Did I get that
09:48:23 9 wrong?

09:48:23 10 A. Yeah. It's west Dayton. Wait a
09:48:26 11 minute. Let me see now. Was it Cincinnati or
09:48:29 12 South Broadway? See, that South Broadway ran
09:48:31 13 up there, too. It could have been South
09:48:40 14 Broadway. The two streets run down -- they're
09:48:45 15 almost parallel. It was between Cincinnati
09:48:52 16 Street and South Broadway but exactly where, I
09:48:53 17 don't know because South Broadway come all the
09:48:54 18 way down through the west side and Cincinnati
09:48:58 19 Street started at Washington Street and ran
09:49:00 20 behind St. Elizabeth's Hospital there. And
09:49:03 21 they were in that area up there. It was an
09:49:06 22 industrial area up in there. Which street they
09:49:08 23 were on -- I think it was Cincinnati Street,
09:49:11 24 but I couldn't swear to it.

09:49:13 25 Q. Okay. If you think of the name of

09:49:18 1 the company , of Sam Finn 's company , let us
09:49:23 2 know .

09:49:23 3 A. I will .

09:49:24 4 Q. Tell Tim . All right . Let me ask
09:49:26 5 you about -- just the office you had when you
09:49:34 6 were working in real estate when you moved into
09:49:42 7 an office next to the entrance of the dump .

09:49:48 8 You testified in 2011 that you had
09:49:50 9 an office with windows going north and east
09:49:54 10 from your --

09:49:55 11 A. Yeah . The building actually faced
09:49:58 12 what's Dryden Road now . And I had the front
09:50:02 13 office . So I had -- we had a door and a
09:50:04 14 vestibule and a waiting room . I had the front
09:50:07 15 office there . And I had a window in that
09:50:09 16 office on the -- it would be on the -- looking
09:50:15 17 east and then I had a window on the side
09:50:18 18 looking north . I was on the corner . It's
09:50:20 19 still there , right across from the trucking
09:50:24 20 company , B&G Trucking, now .

09:50:27 21 Q. And you testified that the
09:50:28 22 entrance to the dump at that time was outside
09:50:30 23 your window to the north ?

09:50:32 24 A. Yes .

09:50:32 25 Q. So you had a good view of vehicles

09:50:38 1 coming into the dump ?

09:50:38 2 A. I would say when I was at my desk ,
09:50:41 3 yeah . I had my desk facing out because I had
09:50:43 4 the door open and behind me and I used to keep
09:50:46 5 it shut . That way I didn't have to see who
09:50:50 6 came in the other part , for the other building ,
09:50:53 7 you know, see my dad or Cyril or someone, you
09:50:54 8 know.

09:50:54 9 Q. So you didn't have to see who
09:50:56 10 walked into the building , is that what you're
09:50:56 11 saying?

09:50:57 12 A. Yeah .

09:50:57 13 Q. But you were able to see outside
09:50:59 14 through the windows ?

09:51:00 15 A. Yeah . My desk -- I put my desk so
09:51:02 16 it faced the window on the north . And then to
09:51:06 17 my right was the window on the east -- looking
09:51:09 18 east , facing east . I was on the west side of
09:51:12 19 Broadway there .

09:51:13 20 Q. And from where your office was ,
09:51:15 21 where was the gate -- there was a gate
09:51:20 22 entrance ?

09:51:20 23 A. The gate was in the back . It was
09:51:22 24 halfway back. If you got one of the photos ,
09:51:24 25 you'll see that where the B&G Trucking C ompany

09:51:27 1 is, there's a building behind them. And then
09:51:29 2 right across the way, there's another building,
09:51:31 3 and that was the dump building. That's now
09:51:34 4 occupied by a vending machine company.

09:51:36 5 Q. We will mark this as Boesch
09:52:26 6 Exhibit 1.

09:52:26 7 (Thereupon, Boesch Exhibit Number 1
09:53:36 8 was marked for purposes of identification.)

09:53:36 9 (Thereupon, an off-the-record
09:53:37 10 discussion was had.)

09:53:37 11 (Thereupon, a break was had.)

10:03:55 12 Q. Okay. Jack, I put in front of you
10:03:58 13 an aerial photograph. Let me start out by
10:04:02 14 asking, do you recognize what's in the photo?

10:04:05 15 A. Yes.

10:04:06 16 Q. Can you describe what you see?

10:04:08 17 A. Well, I see the South Broadway
10:04:13 18 properties there, Valley A sphalt and across the
10:04:17 19 street, DP&L's building there.

10:04:19 20 Q. South Broadway, is that the road
10:04:22 21 coming straight down the middle of the --

10:04:25 22 A. That is, sir.

10:04:26 23 Q. Top to bottom?

10:04:27 24 A. Uh-huh.

10:04:28 25 Q. Do you see where it says Dryden

10:04:31 1 Road towards the bottom part of that photo ?

10:04:34 2 A. Yes, sir . Uh-huh .

10:04:35 3 Q. Is that your understanding of
10:04:36 4 where Dryden Road is in this photo ?

10:04:39 5 A. Yes, sir . That is correct .

10:04:40 6 Q. Formerly Springboro ?

10:04:44 7 A. Formerly Springboro .

10:04:46 8 Q. Formerly South Broadway ?

10:04:48 9 A. Formerly South Broadway .

10:04:50 10 Q. Do you see the South Dayton Dump
10:04:53 11 in this photo ?

10:04:54 12 A. Well , it -- where it is is all the
10:04:58 13 trees and stuff , it's all filled up there .

10:05:01 14 There's foliage in the back of the trees and so
10:05:04 15 forth . Yes, sir .

10:05:04 16 Q. And to the left would be to the
10:05:07 17 west of Dryden Road ; is that right ?

10:05:10 18 A. It would be the west side of
10:05:11 19 Dryden Road . Yes, sir .

10:05:13 20 Q. Can you -- I have a -- I gave you
10:05:16 21 a green pen . It might be in front of you
10:05:18 22 somewhere . Can you locate and circle the
10:05:21 23 building where your office was ?

10:05:23 24 A. Yes . (Witness complies with
10:05:31 25 request.)

10:05:31 1 Q. And then write next to it office .
10:05:36 2 Just write the word office in it or next to it
10:05:43 3 with an arrow to it.

10:05:46 4 MR. HOFFMAN: Here, write it in here
10:05:46 5 and then put an arrow over to where you circled
10:05:51 6 it. That makes it easy to see. Now, just take
10:05:54 7 that over there. There you go.

10:05:57 8 THE WITNESS: Well, how you can
10:05:58 9 identify it pretty easy on the right, if you're
10:06:01 10 coming from the river south on Dryden Road, the
10:06:05 11 big white roof building is DP&L. You come to your
10:06:10 12 left and south a little bit, and the next white
10:06:14 13 roof building there is the B&G Trucking Company.
10:06:17 14 And then the next little building -- the little --
10:06:20 15 the big building with the dark roof has a wing on
10:06:23 16 the north end there, a little office wing there,
10:06:25 17 and it has one on the south, too, but we were in
10:06:29 18 the one on the north, okay?

10:06:29 19 Q. Uh-huh.

10:06:30 20 A. And that's small. My office was
10:06:33 21 right in the front, in the corner there. That
10:06:35 22 would be the northeast corner of that building.
10:06:38 23 Okay. And I had a window out the front and out
10:06:42 24 the side there. Behind that building, going up
10:06:47 25 to the pile was the dump building. That was

10:06:50 1 their headquarter . That's where they operated
10:06:52 2 out of .

10:06:52 3 Q. Is that where Kenny --

10:06:54 4 A. That was Kenny and Alcine . And
10:06:56 5 that -- that -- between those two buildings ,
10:06:57 6 where my office was and the white roofed
10:07:01 7 building just north of it was the entrance to
10:07:04 8 the dump .

10:07:05 9 Q. Can you put a circle around the
10:07:07 10 dump headquarters and put HQ next to it?

10:07:10 11 A. Yeah . (Witness complies with
10:07:14 12 request.) HQ. How's that for dump ?

10:07:17 13 Q. Sounds pretty efficient .

10:07:20 14 A. And then later on, when they
10:07:22 15 closed all that down and Alcine was operating ,
10:07:27 16 they came in along the easement . He was in the
10:07:30 17 back , back here , where he had a palletizing
10:07:33 18 machine or something back there . I don't know .

10:07:35 19 Q. A what machine ?

10:07:36 20 A. He burned pallets and stuff . He
10:07:39 21 had some kind of trash machine that he enclosed
10:07:42 22 and he had a funnel out , you know , the top ,
10:07:48 23 chimney , and he burned wood pallets and things
10:07:50 24 like that back there . I don't know .

10:07:52 25 Q. You had a chance to see that on

10:07:55 1 occasion ?

10:07:56 2 A. You can't see it on this , where it
10:07:59 3 was. I was only back there once . I had no --
10:08:01 4 no interest to go back there because at the
10:08:03 5 time , I sold my interest when my father died to
10:08:08 6 his partner , Mr. Grillot . And my sisters and
10:08:11 7 sister-in-law , and my brother was -- or my
10:08:14 8 brother and my sister , sister sold to my
10:08:19 9 stepmother .

10:08:19 10 And the reason I sold to Mr. Grillot
10:08:21 11 is because he owed me on a commission on the other
10:08:24 12 side of the road and I wanted to get paid that and
10:08:27 13 he was arguing with me on that . So he agreed to
10:08:30 14 pay me , and I said okay . I made more money than
10:08:34 15 the rest of them .

10:08:34 16 Q. This is after your father died in
10:08:38 17 1979?

10:08:39 18 A. Yes .

10:08:39 19 Q. And you sold your interest to --

10:08:39 20 A. Yeah. And I stayed -- I was gone
10:08:42 21 from there. I never went back hardly at all .

10:08:44 22 Q. Prior to that , you had a chance to
10:08:47 23 see this wood burning operation ?

10:08:50 24 A. I'm sorry ?

10:08:51 25 Q. Prior to that , you had a chance to

10:08:53 1 see that wood burning operation ?

10:08:55 2 A. Yes . Cyril was still alive , and

10:09:00 3 he told me, he said Alcine has got a wood

10:09:01 4 burning -- he took me back there one day , and

10:09:03 5 he said I'll show it to you .

10:09:05 6 Q. Do you know whose wood was burnt

10:09:07 7 back there ?

10:09:07 8 A. I didn't know a thing about that

10:09:09 9 operation . All I did was rode back there with

10:09:12 10 Cyril one morning and he showed it to me and

10:09:14 11 Alcine was there and I don't know what -- who

10:09:16 12 they -- he was burning wood. It was a wood

10:09:18 13 burning thing . He burned used wood because at

10:09:22 14 one time , as you can see , on this map , there

10:09:25 15 was a palletizing yard up front here

10:09:28 16 (indicating) . That was on Grillot 's ground .

10:09:30 17 Q. Ever hear of something called skid

10:09:34 18 row ?

10:09:34 19 A. Where ?

10:09:35 20 Q. At the dump .

10:09:36 21 A. Oh, yeah . It was a little bit of

10:09:38 22 everything .

10:09:39 23 Q. All right . Back to your office --

10:09:45 24 A. Yes, sir .

10:09:45 25 Q. -- that you moved into in 1960 ?

10:09:48 1 A. Yes . That's correct .

10:09:49 2 Q. It gave you an opportunity to see
10:09:51 3 trucks coming into the dump and were there?

10:09:53 4 A. Yes, sir .

10:09:54 5 Q. We've had some testimony on
10:09:57 6 companies you saw in the last deposition . I'm
10:10:00 7 not going to talk about ones where their
10:10:05 8 attorneys were present , but I'm going to ask
10:10:07 9 you about some companies that you testified
10:10:10 10 about at the last deposition where the
10:10:11 11 attorneys were not present at the time to give
10:10:13 12 them an opportunity to ask questions as well .

10:10:19 13 Let me ask you about a company called
10:10:22 14 Peerless Trucking .

10:10:23 15 A. Yes, sir .

10:10:23 16 Q. Do you know the name Peerless
10:10:26 17 Trucking ?

10:10:26 18 A. Peerless Transportation.

10:10:28 19 Q. What do you know about Peerless
10:10:29 20 Transportation?

10:10:29 21 A. They were a transporting company .
10:10:31 22 They were a trucking company . They hauled for
10:10:33 23 individuals and things like that .

10:10:35 24 Q. Uh-huh . And then when did you --
10:10:39 25 if you can recall , when did you first hear

10:10:42 1 about Peerless ?

10:10:44 2 A. Well , I don't know exact time and
10:10:48 3 date . I remember they had gray trucks . I
10:10:53 4 don't know if that will help anything.

10:10:53 5 Q. Do you remember them back when you
10:10:55 6 were in high school ?

10:10:56 7 A. Well , I wasn't around there that
10:10:58 8 much in high school . I just worked on
10:11:00 9 Saturdays . And usually there were nobody
10:11:01 10 dumping on Saturdays except household stuff .

10:11:03 11 Q. Sure . Sure . But I'm asking if
10:11:06 12 Peerless is a name that you remembered back
10:11:08 13 from your high school days . I'm not asking yet
10:11:11 14 who you saw when . I'm just asking you what
10:11:14 15 you -- what you -- when you --

10:11:16 16 A. I heard the name Peerless . And if
10:11:18 17 you were in Dayton , you couldn't miss them .
10:11:21 18 But I don't remember them specifically coming
10:11:24 19 in the dump when I was in high school .

10:11:26 20 Q. Do you remember them coming in at
10:11:28 21 some point in time ?

10:11:29 22 A. Well , it was '60 s , between '60 and
10:11:34 23 '64 when I was mostly there .

10:11:35 24 Q. What color trucks did you say they
10:11:37 25 had ?

10:11:37 1 A. Gray . They had gray trucks .

10:11:39 2 Q. And can you describe the trucks
10:11:42 3 further ?

10:11:42 4 A. Well , they were sort of like
10:11:44 5 flatbed trucks with sides on them , you know ,
10:11:47 6 like gated sides on them .

10:11:48 7 Q. Uh-huh .

10:11:50 8 A. And that's mostly what I saw .
10:11:53 9 They were transport ation . They were probably a
10:11:56 10 ton and a half , you know .

10:11:57 11 Q. Ton and a half size truck ?

10:11:59 12 A. Trucks. Yes, sir . Flatbeds .

10:12:01 13 Q. And do you remember seeing the
10:12:03 14 Peerless name on them ?

10:12:03 15 A. Peerless Transportation . Yes,
10:12:06 16 sir .

10:12:06 17 Q. Did they have an insignia that you
10:12:08 18 remember ?

10:12:08 19 A. Not that I remember . No, sir .

10:12:10 20 Q. Was the name on the doors of the
10:12:12 21 truck , the side doors of the truck ? I mean,
10:12:14 22 the cabin doors of the truck .

10:12:17 23 A. I think Peerless had them painted
10:12:20 24 on the back of the cab because their cab was
10:12:22 25 expose d. And I just think that . I can't

10:12:25 1 positively say that .

10:12:27 2 Q. Okay . That's good . How often did
10:12:30 3 you see Peerless -- you saw these trucks coming
10:12:33 4 into the dump past your office ?

10:12:37 5 A. How often did I --

10:12:37 6 Q. Well, first I want to ask , did you
10:12:39 7 see these trucks coming into the dump past your
10:12:42 8 office?

10:12:42 9 A. That's where I'd see them at .

10:12:44 10 Yes, sir .

10:12:44 11 Q. Can you give me your best estimate
10:12:47 12 as to how often you would see them ?

10:12:49 13 A. No . I don't have any idea how
10:12:51 14 often they come in . I'm sitting there talking
10:12:52 15 on my phone looking out the window and I see a
10:12:55 16 truck go by . Okay ? I didn't count them or
10:12:58 17 anything .

10:12:58 18 Q. I understand . Did you see them
10:12:59 19 every year that you worked from '60 to '64 at
10:13:03 20 the office ?

10:13:04 21 A. I could have . I don't know for
10:13:06 22 sure . I've seen them come in . I don't know if
10:13:09 23 I saw them every year consistently or not
10:13:13 24 because I really wasn't looking for them .

10:13:14 25 Q. No, I understand that . We're just

10:13:15 1 trying to get as much information as
10:13:17 2 possible --

10:13:17 3 A. Yes, sir.

10:13:17 4 Q. -- that's still truthful . So if I
10:13:19 5 ask for your best estimate , give me your best
10:13:22 6 estimate . Or if you can't , if you can't give
10:13:25 7 me an estimate , then don't .

10:13:31 8 Do you have -- did you know any of
10:13:33 9 the Peerless drivers ?

10:13:33 10 A. No.

10:13:35 11 Q. Do you have any idea what was in
10:13:37 12 the Peerless trucks ?

10:13:38 13 A. No .

10:13:38 14 Q. Do you know what part of the dump
10:13:41 15 they went to?

10:13:42 16 A. No .

10:13:42 17 Q. Okay . Do you know whether
10:13:46 18 Peerless was one of the regular customers that
10:13:50 19 would have been listed -- that was listed on
10:13:52 20 the over age information you looked at?

10:13:54 21 A. No , they weren't .

10:13:55 22 Q. They were not ?

10:13:56 23 A. No . Not on the list that I saw .

10:13:58 24 Q. Okay . And when you say you saw
10:14:01 25 these -- tell me a little bit about when you

10:14:04 1 saw the over age list . You did mention it was
10:14:07 2 around tax time .

10:14:08 3 A. That was -- that was the only
10:14:09 4 time .

10:14:09 5 Q. Was that a one-time thing or was
10:14:11 6 that every few -- every year or more than one
10:14:14 7 year ?

10:14:14 8 A. Some -- some years , some of them
10:14:18 9 would be on consecutively and some years they
10:14:21 10 wouldn't be , you know . And to break them down
10:14:24 11 into like maybe Peerless was on in '61, you
10:14:28 12 know , and maybe they weren't on again until
10:14:31 13 '64 , you know , I just -- I was just running
10:14:34 14 figures for my dad and he was putting them
10:14:37 15 together . My dad would do all his tax returns ,
10:14:39 16 and then he'd take it up to his CPA to get it
10:14:43 17 checked out .

10:14:43 18 Q. He did it himself and take it up ?

10:14:46 19 A. He did it himself , yeah .

10:14:47 20 Q. Would he pull you in on an annual
10:14:50 21 basis to help out ?

10:14:51 22 A. Well , if he could find me .

10:14:53 23 Q. How successful was he in finding
10:14:56 24 you ?

10:14:56 25 A. Well , once in a while , he'd catch

10:14:59 1 me .

10:14:59 2 Q. So during what period of time did
10:15:05 3 you have an opportunity to -- or the -- an
10:15:09 4 opportunity not to get away from it? During
10:15:13 5 what period of time did he come and ask you for
10:15:16 6 assistance ?

10:15:16 7 A. He'd usually get me the first
10:15:19 8 couple weeks in March . And that was -- that
10:15:21 9 was really when he did his taxes , you know ,
10:15:24 10 because 15th of March , he headed to Florida .
10:15:28 11 Or the 16th rather .

10:15:30 12 Q. Uh-huh .

10:15:34 13 A. But , yeah , he -- I'd just help him
10:15:37 14 run his figures . A lot of times , he'd take me
10:15:40 15 over at night . If I would be home or
10:15:42 16 something , you know , he'd say come on and go
10:15:45 17 over to the office with me , I got to run some
10:15:47 18 tax figures .

10:15:47 19 Q. The office we're talking about is
10:15:50 20 the office you had marked on Exhibit 1 ?

10:15:52 21 A. On Springboro there , south of
10:15:53 22 Broadway. Most of the time that I was there ,
10:15:54 23 it was 2011 Springboro Pike. But they changed
10:15:59 24 the name to South Broadway . I think they
10:16:01 25 changed it when Moraine became the City of

10:16:04 1 Moraine and the Township of Moraine , you know .

10:16:07 2 Q. Sure . That was what , the mid

10:16:09 3 '60 s?

10:16:10 4 A. No , that was when VanBuren

10:16:13 5 Township became Kettering . And that was part

10:16:15 6 of VanBuren Township . And then Moraine

10:16:18 7 detached from Kettering and -- they had a vote

10:16:22 8 and they detached . And then they just went

10:16:26 9 back to a town ship. And then they formed the

10:16:29 10 City of Moraine later on . But they were part

10:16:33 11 of Kettering on the original vote for Van --

10:16:36 12 from VanBuren Township to Kettering .

10:16:39 13 Q. Okay . So you're helping your dad

10:16:41 14 on his taxes when he -- and you were at the

10:16:45 15 office on what is now Dryden Road?

10:16:48 16 A. Yes . That's correct .

10:16:49 17 Q. Were you also helping him with his

10:16:51 18 taxes when you were in college ?

10:16:53 19 A. Well , that was -- that was -- no ,

10:16:56 20 I didn't do them too much . Once in a while

10:16:59 21 he'd catch me , but I was tending bar at night s

10:17:03 22 at Kremer's and going to school .

10:17:05 23 Q. What about when you were both in

10:17:07 24 the office downtown at the --

10:17:10 25 A. At the Reibold building .

10:17:12 1 Q. Didn't help them there with the
10:17:15 2 taxes ?

10:17:15 3 A. No .

10:17:15 4 Q. So it was more later --

10:17:17 5 A. Later on , yes , in the later years .

10:17:20 6 Q. Okay . Anything else you can tell
10:17:24 7 me about the Peerless trucks ?

10:17:26 8 A. No . Not really .

10:17:27 9 Q. All right. Now , you mentioned in
10:17:37 10 a couple of affidavits and in the prior
10:17:41 11 depositions a company called Harris Sebold .

10:17:46 12 A. Yes , sir .

10:17:46 13 Q. Do you know what Harris Sebold ,
10:17:50 14 what kind of company it was in terms of what it
10:17:53 15 manufactured or did ?

10:17:54 16 A. I thought it was a foundry , as far
10:17:57 17 as I know , did some foundry business , but
10:17:59 18 that's about it .

10:17:59 19 Q. Do you know where their location
10:18:01 20 was in the Dayton area ?

10:18:02 21 A. No , I don't .

10:18:03 22 Q. And what else can you tell me
10:18:05 23 about Harris Sebold in relation to South Dayton
10:18:09 24 Dump ?

10:18:09 25 A. About the only thing is that their

10:18:11 1 trucks came in once in a while . Not often , but
10:18:14 2 they came in .

10:18:14 3 Q. Do you remember what the trucks
10:18:16 4 looked like ?

10:18:17 5 A. They were dark . I don't know
10:18:21 6 whether -- a lot of them use that forest green ,
10:18:21 7 NCR was a --

10:18:26 8 MS. KAUFMAN: Use the what?

10:18:27 9 THE WITNESS: A forest green . A sort
10:18:28 10 of dark green .

10:18:30 11 Q. You remember Harris Sebold as a
10:18:33 12 dark green ?

10:18:34 13 A. I can't swear to it . It was a
10:18:36 14 darker color , but I don't know what -- it
10:18:37 15 wasn't a light one . NCR was a light one . You
10:18:39 16 know , they had the -- the color of their
10:18:41 17 buildings , that sort of cream color , you know .

10:18:46 18 Q. So Harris Sebold , to your best
10:18:49 19 memory , is they had dark color trucks ?

10:18:52 20 A. Yes .

10:18:52 21 Q. Do you remember seeing the name of
10:18:54 22 the company anywhere on the trucks ?

10:18:56 23 A. No , I don't .

10:18:56 24 Q. But you do remember their trucks
10:19:00 25 coming in ?

10:19:00 1 A. Yes .

10:19:01 2 Q. Okay. Do you remember seeing the
10:19:03 3 name of Harris Sebold on the over age documents
10:19:10 4 you looked at, tax documents you looked at for
10:19:12 5 your dad?

10:19:13 6 A. No .

10:19:13 7 Q. So your memory from Harris Sebold
10:19:15 8 comes from seeing them come past the office ?

10:19:18 9 A. Just coming past the office . You
10:19:20 10 know, I'd be sitting at my desk talking or
10:19:22 11 working and I'd see these trucks go right by my
10:19:24 12 office . That was about it .

10:19:25 13 Q. Uh-huh . Okay . Anything else you
10:19:28 14 can tell me about Harris Sebold ?

10:19:30 15 A. No , I cannot .

10:19:33 16 Q. Now , I wanted to ask you -- I just
10:19:38 17 wanted to go back just -- I'm going to ask you
10:19:42 18 again , it's not about one of the parties here ;
10:19:45 19 but Montgomery County , their yellow trucks ,
10:19:48 20 have you been thinking about it at all , do you
10:19:50 21 remember seeing them come past your office
10:19:53 22 during that '60 to '64 time period ?

10:19:56 23 A. Well , I know they were in there
10:19:59 24 because some of the drivers that worked on the
10:20:00 25 resurfacing crew in the wintertime , you know --

10:20:04 1 or in the summertime , they hauled on the other
10:20:07 2 solid fill , hauling where they were
10:20:09 3 cleaning off -- you know , like we put a coffer
10:20:13 4 dam up on Dorothy Lane , up on the hill there,
10:20:17 5 years ago when -- it was after the tarring
10:20:19 6 season was over because they didn't tar after
10:20:22 7 the -- September . That was about the end .
10:20:24 8 They ran from about June to September on the
10:20:27 9 tar , you know , and then they had -- we had
10:20:30 10 about eight gravel trucks on that crew . And
10:20:32 11 then they'd give them other jobs during the
10:20:35 12 year . And usually it was cutting down hills or
10:20:37 13 cutting out for bridge embankment s , you know ,
10:20:41 14 and buttrices and stuff .
10:20:43 15 And some of the truck drivers that
10:20:44 16 worked on the tar crew drove those trucks in the
10:20:48 17 wintertime . And if they'd see me in there , they'd
10:20:51 18 stop in and say hi because I knew all those
10:20:54 19 drivers .
10:20:54 20 Q. So if they saw you in your
10:20:57 21 office --
10:20:57 22 A. Yeah. If they saw that my car was
10:20:58 23 there , they'd come in and see if they could get
10:21:01 24 a free cup of coffee .
10:21:03 25 Q. Nothing wrong with that . So what

10:21:05 1 is -- do you remember the names of any of
10:21:08 2 those -- these were County drivers , right?

10:21:09 3 A. Oh, yeah .

10:21:10 4 Q. Do you remember the names of any
10:21:11 5 of those drivers ?

10:21:12 6 A. Oh, yeah . There was one named
10:21:15 7 Butts. And there was a Bernie Focht, F O C H T.
10:21:20 8 he lived down around -- and then the Getter
10:21:23 9 boys from Germantown . Henry Dale was from
10:21:27 10 Germantown. Glen n Zinc from Miamisburg -- not
10:21:29 11 Glen Zinc . Niles Zinc from Miamisburg. And
10:21:33 12 oh, let's see . One of them went to work for
10:21:41 13 WHIO. He was a musician . I can't remember his
10:21:44 14 name . That's about it.

10:21:45 15 Q. So any of those groups still alive
10:21:47 16 that you're aware of?

10:21:48 17 A. No .

10:21:49 18 Q. All passed away , do you think ?

10:21:50 19 A. There's not a one of them . Kirk
10:21:57 20 Petticrew was the foreman of that crew , tar
10:21:59 21 crew , he was from Miamisburg , and I don't think
10:22:02 22 any of them were alive . They were all back
10:22:05 23 then in their forties and fifties .

10:22:07 24 Q. They could still be alive . So
10:22:11 25 let 's go over the names again . I'm going to

10:22:13 1 try to write them down , and spell them .

10:22:15 2 A. Okay. There was the Getters , Roy
10:22:19 3 Getter and his father . They were from
10:22:20 4 Germantown .

10:22:21 5 Q. How do you spell Getter?

10:22:22 6 A. G E T T E R. Henry Dale was from
10:22:27 7 Germantown .

10:22:28 8 Q. D A L E?

10:22:29 9 A. D A L E.

10:22:30 10 Q. Keep going.

10:22:31 11 A. Bernie Focht was from
10:22:36 12 Farmersville . F O C H T. It was a German
10:22:40 13 name .

10:22:40 14 Q. And his name was Bernard ?

10:22:44 15 A. Bernard . Yes. He's dead . I know
10:22:46 16 that . And then there was Niles Zink ,
10:22:49 17 N I L E S. Z I N K from Miamisburg . And there
10:22:56 18 was a couple -- well , Bill Butts. B U T T S.
10:22:59 19 He was from east Dayton .

10:23:02 20 Q. These are guys you worked with on
10:23:04 21 the crew ?

10:23:04 22 A. On the tar crew . Then in the
10:23:06 23 wintertime , they'd bring solid fill in once in
10:23:10 24 a while . How I knew they were bringing it in ,
10:23:13 25 because they'd park their truck right outside

10:23:16 1 my window . They'd come in and say have you got
10:23:19 2 any coffee on . But other than that -- if -- if
10:23:24 3 you find one of them alive , he must be about a
10:23:27 4 hundred and ten .

10:23:28 5 Q. Well, that's unlikely . But if you
10:23:30 6 do , I'll send him over for some coffee .

10:23:34 7 Let me ask you about another name
10:23:36 8 that you mentioned if I can find it . You
10:23:56 9 mentioned a Kirk Petticrew ?

10:23:58 10 A. Well , he was the foreman of the
10:24:00 11 tar crew from Miamisburg . He really didn't
10:24:03 12 drive any trucks . I was just trying to give
10:24:05 13 you another name on the crew . He was a
10:24:07 14 foreman .

10:24:08 15 Q. Now , I want to ask if you remember
10:25:25 16 any other drivers ' names of trucks that came
10:25:27 17 into the --

10:25:28 18 A. Any of the other companies , no . I
10:25:30 19 had no reason to know them . You know , you --

10:25:32 20 Q. Sure . I understand .

10:25:34 21 A. Oh, I guess I should say -- I take
10:25:37 22 that back . I know one fellow that drove for
10:25:40 23 NCR , John Kelly , but he's dead , too . He used
10:25:47 24 to tend bar with us part-time at Kremer's .

10:25:50 25 Q. All right. And did you know any

10:25:51 1 of the DP&L drivers ?

10:25:54 2 A. No. No .

10:26:05 3 Q. All right . Did you know Cyril 's
10:26:13 4 children ?

10:26:13 5 A. Cyril Grillot ?

10:26:15 6 Q. Yes.

10:26:15 7 A. Oh, yeah . Uncle Cyril .

10:26:18 8 Q. Who were Cyril 's children ?

10:26:20 9 A. Who were Cyril 's children ?

10:26:23 10 Q. Right .

10:26:23 11 A. Eddie was the oldest . Then

10:26:26 12 Ronnie . Then Tony. Antoinette. Tony. And

10:26:32 13 then John . Three boys and one girl . Well , no,

10:26:36 14 he had Jack , Cyril, Jr. , who was from his first

10:26:40 15 marriage . Then he had a daughter . She lived

10:26:43 16 over in Indiana someplace from his first

10:26:47 17 marriage .

10:26:47 18 Q. Now , what , if any , of Cyril 's

10:26:51 19 children did picking or otherwise worked at the
10:26:54 20 dump ?

10:26:54 21 A. Well , really , other than Jack , and
10:26:57 22 he never came around the dump at all . Cyril,
10:27:02 23 Jr. , he -- he worked for NCR and he never came
10:27:06 24 around the dump at all . Then Cyril 's second
10:27:09 25 family , Eddie would come down once in a while

10:27:09 1 with Cyril, but he wasn't old enough to do
10:27:09 2 anything when I was there.

10:27:16 3 After I left in '66 -- '64 -- well, I
10:27:20 4 really didn't go back much after '64 in the
10:27:26 5 offices. But Cyril had him around sometime s but
10:27:29 6 that's all. Then Johnny was too young. He was
10:27:32 7 still in -- I think he was in lower grade school,
10:27:35 8 you know.

10:27:36 9 Q. So you don't know whether John
10:27:37 10 ever worked at the dump then, right?

10:27:38 11 A. I don't think John ever did. John
10:27:41 12 never -- he's a CPA. And he graduated from UD.
10:27:46 13 But he's -- let's see. John is probably --
10:27:50 14 he's only maybe fifty, I don't know, forty
10:27:55 15 some, fifty. A lot of this stuff was fifty,
10:27:58 16 sixty, sixty years ago, seventy years ago.

10:28:00 17 Q. Absolutely. Any other family
10:28:02 18 members of the Grillot family that you know of
10:28:04 19 that worked at the dump?

10:28:05 20 A. Well, Cecil was a stone mason,
10:28:09 21 another brother, and he did some work down
10:28:14 22 there, I don't know what it was, but it was for
10:28:16 23 Kenny and Alcine. But he didn't work on the
10:28:18 24 dump or anything.

10:28:19 25 Q. And he passed away, Cecil?

10:28:22 1 A. Yes .

10:28:23 2 Q. And what about in the Boesch
10:28:25 3 family , anyone else in the Boesch family?

10:28:26 4 A. No. No. My uncles never came
10:28:29 5 down there .

10:28:30 6 Q. And no cousins ?

10:28:33 7 A. No. My cousin s, no.

10:28:37 8 MR. SILVER: All right . That's all
10:28:38 9 the questions I have for you . Thank you for your
10:28:38 10 time.

10:28:38 11 THE WITNESS: Okay.

10:28:41 12 MR. SILVER: Thanks for your time .

10:28:42 13 THE WITNESS: You're welcome .

10:28:48 14 MR. FRY: I'm Roger Fry. I have no
10:28:49 15 questions at this time .

10:29:02 16 MR. HAUGHEY: Do you want to go first
10:29:03 17 since you're Harris ?

10:29:03 18 CROSS-EXAMINATION

10:29:34 19 BY MS. KAUFMAN:

10:29:34 20 Q. Hi , Mr. Boesch .

10:29:36 21 A. Yep . Excuse me just a minute ,
10:29:40 22 will you , please ?

10:29:44 23 (Pause in proceedings.)

10:29:55 24 Q. If you need a break , let me know .

10:29:58 25 And I'll be quick . We met out in the hall . I

10:30:01 1 represent Harris Corporation which owned the
10:30:04 2 Harris Sebold business in Dayton which
10:30:09 3 manufactured commercial paper cutting
10:30:13 4 machinery . And I just want to go through some
10:30:18 5 of the dates because I'm confused .

10:30:30 6 Did you ever see a Harris Sebold
10:30:36 7 truck with foundry cores in it come by the dump
10:30:40 8 when you were there?

10:30:41 9 A. No . I don't know really what they
10:30:44 10 had in their trucks . The only reason I thought
10:30:47 11 it was foundry because Kenny says , you know ,
10:30:52 12 that we got too many foundry cores coming in
10:30:55 13 here . There were several companies that dumped
10:30:58 14 their cores in there . That's the only contact
10:31:01 15 I had with them , other than seeing a truck , you
10:31:05 16 know.

10:31:05 17 Q. Okay . When you were looking
10:31:12 18 through the accounts to help your father with
10:31:14 19 his taxes , what time period was that ? Were you
10:31:17 20 in college ? Were you -- was it after you
10:31:20 21 were --

10:31:21 22 A. Oh, it was -- well , I helped him
10:31:24 23 some when I was in college . I run his adding
10:31:30 24 machines for him . You know, it was one of
10:31:31 25 those old manual ones . Anyway . But I helped

10:31:35 1 him some in college , once in a while , he'd call
10:31:38 2 me up as he got older . But , still , up until he
10:31:42 3 died , he was eighty-two, and he did his taxes
10:31:45 4 himself . And he'd always run them the old way .
10:31:48 5 He didn't use a computer or anything . And
10:31:51 6 that's what I'd just help him do .

10:31:55 7 And that's where I saw -- and,
10:31:57 8 really , when I saw the over ages was primarily in
10:32:01 9 the '50s when I was in college and high school --
10:32:06 10 well , I wasn't around the last year of high
10:32:09 11 school . But that was in the '50s .

10:32:11 12 Q. And the customers that had
10:32:14 13 over ages , those over ages could have been for
10:32:21 14 commercial trash or paper or --

10:32:23 15 A. All it really was -- what it was,
10:32:25 16 was primarily most of the companies were things
10:32:29 17 that were trash or whatever was produced but
10:32:32 18 their company , you know . And whatever product
10:32:35 19 they made, you know, like Frigidaire had those
10:32:41 20 shavings from the ice trays and stuff like
10:32:44 21 that .

10:32:48 22 And as far as the only company that
10:32:50 23 had -- that I seen that I really didn't know what
10:32:53 24 they were hauling was -- was -- the transportation
10:33:01 25 company . The one we were just talking about .

10:33:04 1 MR. HOFFMAN: Peerless ?

10:33:05 2 THE WITNESS: Peerless . I never --

10:33:06 3 you know , they were a transportation company , as

10:33:09 4 far as I knew . They hauled for other people , you

10:33:12 5 know . And I -- I didn't really know what any of

10:33:15 6 them hauled in there , to be honest with you ,

10:33:18 7 except for the few . The -- Dayton-Walther had a

10:33:21 8 special truck to haul their foundry cores in , and

10:33:24 9 it was like a short bed --

10:33:24 10 Q. Uh-huh.

10:33:26 11 A. -- and it had a flatbed on the

10:33:28 12 back and it had a lift on it where it would

10:33:32 13 pick the foundry core up and drop it on the

10:33:35 14 truck and then take it down and dump it .

10:33:36 15 In fact , they were at one time

10:33:38 16 dumping across the river and the County got -- or

10:33:41 17 the conservancy got on them because they'd dump

10:33:45 18 them right on the river 's edge off of West River

10:33:49 19 Road . That's about all I know about that .

10:33:51 20 Q. Okay. And so prior to 1960 , you

10:33:57 21 really didn't observe trucks coming in and out

10:34:00 22 because you were there on the weekends ?

10:34:02 23 A. Well , yeah , I'd just come down on

10:34:05 24 Saturday . And really , from -- of course , I was

10:34:09 25 in the service from '54 to '56 . Then I went to

10:34:13 1 Ohio Northern for a year . And really , that's
10:34:17 2 when he decided -- I came back in '59 and he
10:34:22 3 decided to build that wing down on that
10:34:27 4 building down there because his brothers were
10:34:29 5 moving up to the Third National building and he
10:34:31 6 didn't want to move . And my Uncle Bob was
10:34:34 7 doing a lot of his stuff . He'd just rather do
10:34:37 8 other things . So they built that wing down
10:34:39 9 there . And I -- I was in the Reibold building
10:34:43 10 with him so I went down there .

10:34:44 11 Q. Okay . Give me just a minute . I
10:34:48 12 just wanted to look over my questions .

10:34:57 13 (Pause in proceedings.)

10:35:46 14 Q. Well , I just have one last
10:35:49 15 question . When you went -- when you were in
10:35:51 16 boarding school , did you ever go back to the
10:35:53 17 dump ? I didn't hear where that boarding school
10:35:57 18 was . Was it close by to Dayton ?

10:35:59 19 A. Fayetteville , Ohio . You mean
10:36:02 20 grade school ?

10:36:02 21 Q. Uh-huh .

10:36:03 22 A. No , we wouldn't go -- we wouldn't
10:36:06 23 go to the dump , per se . Of course , that
10:36:08 24 really -- the dump wasn't really in operation
10:36:11 25 then . It wasn't in operation . Really , Alcine

10:36:15 1 was the one that really -- and Cyril -- was the
10:36:18 2 one that pushed the dump. And that was after
10:36:20 3 Alcine got out of the Army in 1945 or '46,
10:36:24 4 something like that. But, no, that dump wasn't
10:36:27 5 in operation then.

10:36:28 6 Q. Okay.

10:36:29 7 A. But we used to go back to the
10:36:31 8 farm. My dad had the farm behind it, you know,
10:36:34 9 which then became part of the dump later on
10:36:37 10 where the gravel pits were.

10:36:40 11 MR. KAUFMAN: Okay. I don't have
10:36:42 12 anything further. Thank you.

10:36:42 13 CROSS-EXAMINATION

10:36:47 14 BY MR. HAUGHEY:

10:36:47 15 Q. Hi. My name is Steve Haughey. I
10:36:52 16 represent some of the Defendants in this claim.

10:36:54 17 Do you want me to call you Mr. Boesch
10:36:56 18 or Jack?

10:36:56 19 A. Jack is fine.

10:36:57 20 Q. I'd like to talk with you a little
10:37:00 21 bit about the taxes. You were referring to
10:37:04 22 over age?

10:37:05 23 A. Yes, sir.

10:37:05 24 Q. I'm trying to understand why
10:37:08 25 you're using that term. Is that just another

10:37:11 1 way to refer to the regular customers who were
10:37:13 2 account customers at the site ?

10:37:14 3 A. Well , yes . They had -- they had
10:37:19 4 the lease where Alcine and Kenny leased the
10:37:23 5 ground . It was primarily Alcine 's brother
10:37:26 6 Cyril that leased the dump and ran the dump .
10:37:29 7 Then Kenny worked for Huffy and he retired and
10:37:32 8 he worked for Alcine then . Okay? And what
10:37:34 9 they meant by over ages , they had some regular
10:37:37 10 customers , monthly customers , you know, account
10:37:41 11 customers, and after they dumped so much , if
10:37:43 12 they went over a certain amount of dumping , you
10:37:47 13 know , then Cyril and Dad collected a percentage
10:37:49 14 of that what I called over age , you know , that
10:37:52 15 was above the regular lease figures . They
10:37:56 16 collected a percentage of that , I think
10:37:57 17 something like thirty percent on that where the
10:38:00 18 customers went over the amount . They usually
10:38:02 19 dumped with their monthly accounts . Some of
10:38:05 20 them had a monthly fee to dump . In other
10:38:08 21 words, they didn't pay when each load came in .

10:38:10 22 Q. Okay . So the -- so if these
10:38:15 23 regular customers went beyond a certain amount ,
10:38:17 24 then an additional amount of money was paid by
10:38:22 25 the -- Alcine -- Kenny and Alcine over to your

10:38:26 1 father as his share --

10:38:28 2 A. And Cyril . Yeah .

10:38:29 3 Q. -- of the revenue ?

10:38:32 4 A. Yeah .

10:38:32 5 Q. What did you look at? What

10:38:34 6 documents did you look at when you were helping

10:38:36 7 your father fill out the taxes in those years

10:38:40 8 based on this over age you're referring to?

10:38:43 9 A. Well , he had the sheets that

10:38:45 10 Kenny -- or that Alcine had given him for the

10:38:48 11 accounts of the dump , you know . And then he'd

10:38:53 12 make a list of what they got over the regular

10:38:56 13 lease amount and he'd put the company that went

10:38:59 14 on it , in other words, that went over what

10:39:01 15 their annual -- or what their monthly fee was ,

10:39:04 16 you know .

10:39:05 17 Q. Okay . And did your father pay

10:39:10 18 estimated taxes every quarter or --

10:39:14 19 A. Oh, hell , yes . He paid them more

10:39:17 20 than I would have ever paid them .

10:39:18 21 Q. Okay . So when he made his tax

10:39:20 22 filings and did his annual tax returns , would

10:39:23 23 there be a sheet that would be a part of his

10:39:28 24 tax returns or his records that would have all

10:39:30 25 the over age names on it that were used to, you

10:39:35 1 know , to justify the revenue ? There would be
10:39:39 2 some document , correct ?

10:39:40 3 A. No , he never used it in his
10:39:42 4 document return . He used it on -- on -- where
10:39:45 5 he listed all of his leases , you know , his
10:39:47 6 buildings that were leased and everything . He
10:39:49 7 lease d it with those and the percent age
10:39:51 8 increase . And he had the sheet that Alcine had
10:39:53 9 given him for each company , but he didn't list
10:39:56 10 it as individual companies . He listed it as
10:40:07 11 South Dayton Dump . In other words , when they
10:40:08 12 went over what their monthly fees was , that's
10:40:10 13 when he got it . Alcine presented those lists
10:40:14 14 to them , the ones that went over every quarter .
10:40:17 15 But he never -- all I had seen was the list
10:40:22 16 that Alcine had given him , he says well , this
10:40:25 17 was this company , and it was just -- but he had
10:40:29 18 some pretty good stacks on just his regular
10:40:32 19 leases .

10:40:33 20 Q. What did you do then ? Did you add
10:40:35 21 up the dollar figure so that your father could
10:40:38 22 declare that as income ?

10:40:39 23 A. I'd run his adding machine . He
10:40:43 24 had one of those big old adding machine s . He'd
10:40:46 25 give me the figure and I'd put it in the adding

10:40:50 1 machine and I'd give him the little roll off of
10:40:52 2 it, you know. He called it out to me and I
10:40:53 3 just -- he just really called the dollar
10:40:55 4 figures out to me .

10:40:56 5 Q. Do you have custody of your
10:41:00 6 father 's old files , including maybe his old tax
10:41:03 7 return s?

10:41:03 8 A. They're gone . I don't know what
10:41:05 9 happened to them . I -- we looked --
10:41:11 10 Mrs. Grillot had a place in her storage at her
10:41:14 11 condo . We looked down there a couple years
10:41:18 12 ago . I don't know, Jim Keifer was after my
10:41:20 13 uncles died and everything. They really didn't
10:41:23 14 take care -- after he died , Cyril had an
10:41:26 15 attorney by the name of Jim Keifer , and he --
10:41:30 16 but his files -- I never found anything in his
10:41:31 17 files . I don't know . And my dad kept good
10:41:34 18 files , but I don't know what he -- when I --
10:41:37 19 when I left over there , I left . I mean, you
10:41:42 20 know --

10:41:42 21 Q. Did your father use an accountant
10:41:45 22 to --

10:41:46 23 A. Yes . It was Ed Hence.

10:41:49 24 Q. Hence ?

10:41:50 25 A. Hence . And he's deceased . But

10:41:56 1 Dix --

10:41:56 2 Q. How do you spell Hence?

10:41:57 3 A. H E N C E.

10:41:59 4 Q. Is he still alive ?

10:42:01 5 A. No. He'd dead . He was on South

10:42:03 6 Main Street .

10:42:03 7 Q. Does he -- does his office still

10:42:06 8 exist ?

10:42:06 9 A. There's a man that handles it .

10:42:10 10 It's one of the Dixes , D I X, and he's down off

10:42:15 11 of -- off of northbound Dixie about -- just

10:42:20 12 about -- below Dorothy Lane there . There's

10:42:22 13 some white buildings , office building s there on

10:42:25 14 the right , and he's in one of those .

10:42:27 15 Q. Is this a person by the name of

10:42:30 16 Dix ?

10:42:30 17 A. Yes .

10:42:30 18 Q. How do you spell that , please ?

10:42:31 19 A. D I X.

10:42:33 20 Q. And would that person possibly

10:42:35 21 still have Ed Hence's old files ?

10:42:39 22 A. Might have Ed Hence's files , yes ,

10:42:42 23 because he's still doing Margaret and my

10:42:47 24 stepmother 's tax returns .

10:42:49 25 Q. Are you familiar with the dump

10:42:54 1 tickets that were filled out by regular
10:42:59 2 customers ?

10:42:59 3 A. (Witness shakes head back and
10:43:00 4 forth.)

10:43:00 5 Q. You're not . So you've never seen
10:43:02 6 a dump ticket ?

10:43:02 7 A. No, I never seen a dump ticket.
10:43:03 8 It was always cash and carry all I saw , except
10:43:06 9 for the account customers , you know .

10:43:07 10 Q. Okay . Well , how was the -- wasn't
10:43:10 11 the dump ticket used for the account customers ?

10:43:13 12 A. I don't know how it was used . I
10:43:15 13 didn't know anything about Alcine 's accounting .
10:43:18 14 All I -- and really , how I got those names that
10:43:21 15 I had was -- knew of was through that over age
10:43:25 16 mostly . But I knew that they had accounts
10:43:28 17 because Cyril was always talking about it .

10:43:30 18 Q. With respect to Peerless
10:43:36 19 Transportation , I just want to clarify a couple
10:43:38 20 of things there . Isn't it -- did you testify
10:43:40 21 that the only time you ever saw any Peerless
10:43:44 22 Transportation trucks was somewhere between
10:43:46 23 1960 and 1964 , correct?

10:43:49 24 A. Yes, sir .

10:43:49 25 Q. And you had no knowledge of what

10:43:51 1 was in the trucks , correct?

10:43:53 2 A. No .

10:43:53 3 Q. And you don't know who Peerless
10:43:55 4 was hauling for in those trucks , correct?

10:43:59 5 A. No .

10:44:00 6 Q. Did your father own the land on
10:44:08 7 which the UD basketball arena sits today ?

10:44:12 8 A. No . I made a sale . I traded the
10:44:15 9 conservancy twenty acres down on the Grillot
10:44:19 10 and Boesch ground down there where the gravel
10:44:23 11 pit that has the lake on it now is on the south
10:44:25 12 end of this property . I traded that to the
10:44:28 13 conservancy for four and a half acres where the
10:44:31 14 UD ground sits . Where the UD arena sits now .
10:44:35 15 I made that deal . I had it sold for three
10:44:39 16 fifty . And here Father Resch and Brother
10:44:41 17 Lockner and Elwood Zimmer, and Solvary was with
10:44:44 18 me . And he says there goes your commission .
10:44:47 19 And he was right . They took the three hundred
10:44:49 20 and fifty thousand dollar tax deduction .

10:44:51 21 Q. So at one time you owned the land
10:44:54 22 on which the UD basketball arena sits today ?

10:44:56 23 A. Yeah . We did take title to it .

10:44:58 24 We traded the conservancy for that land . That
10:45:01 25 was all conservancy ground over there . Like

10:45:02 1 the high school stadium is on a
10:45:05 2 ninety-nine- year lease . The conservancy was
10:45:09 3 always afraid to sell that land over there for
10:45:11 4 years because they think they got it under
10:45:14 5 false pretenses .

10:45:15 6 There was a story , and I'll tell it
10:45:17 7 to you if you want to hear it. Colonel Deeds, who
10:45:21 8 was president of NCR , sat in his office and looked
10:45:24 9 across the river there . And there was a bunch of
10:45:27 10 shacks . It was tin town . And it offended his
10:45:30 11 view . So he was on the conservancy board , and he
10:45:32 12 got them to condemn that ground . They said they
10:45:35 13 might have to dredge the river someday and they
10:45:38 14 had to put the off-ball someplace and it was low
10:45:39 15 over there so they could put it over there . So
10:45:42 16 they condemned all that , bought it all up, you
10:45:44 17 know. Well , then the conservancy was afraid to
10:45:48 18 sell it. Like I said, the high school stadium is
10:45:50 19 on a ninety-nine- year lease . And they wouldn't
10:45:52 20 sell. But I knew Max Mitchell who's head of the
10:45:55 21 conservancy, and I worked a trade out with twenty
10:45:58 22 acres down the river where they had some ground
10:46:00 23 south of this Grillot and Boesch ground . I worked
10:46:03 24 a trade out for four and a half years for the
10:46:05 25 arena, and I had it sold to UD for three hundred

10:46:08 1 and fifty thousand dollars . Well , then my dad and
10:46:10 2 his partner , well, Cyril finally figured out the
10:46:13 3 tax write-off they could get for that so they gave
10:46:14 4 it to UD .

10:46:14 5 Q. Okay.

10:46:17 6 A. So out of all my work , I got to
10:46:20 7 pick out two seats .

10:46:22 8 Q. So it was your father and Cyril
10:46:32 9 Grillot who donated the property to the
10:46:35 10 University of Dayton on which the basketball
10:46:38 11 arena sits down , correct?

10:46:39 12 A. Yes . That's correct .

10:46:40 13 Q. Do you know if there is a memorial
10:46:45 14 plaque in the arena that has your dad's name on
10:46:48 15 it?

10:46:48 16 A. Yeah . There's a memorial plaque
10:46:51 17 someplace . It had my dad and Cyril 's name on
10:46:54 18 it . I don't know . It might be up in the --
10:46:56 19 what's the Boesch lounge today . He never
10:46:58 20 wanted his name attached to it, but then my
10:47:00 21 stepmother gave them the money to redo the
10:47:02 22 arena lounge up there , you know, she donated
10:47:07 23 that money , and so they put her name on it and
10:47:10 24 his . But --

10:47:11 25 Q. Would it surprise you that Ed

10:47:15 1 Grillot would testify that his father 's name
10:47:24 2 didn't appear on anything after that donation ?

10:47:27 3 A. Well , I think the plaque is still
10:47:30 4 up there in one of the trophy things or
10:47:33 5 something . I wouldn't swear to it. It might
10:47:35 6 still be up in the lounge there . I don't go up
10:47:37 7 there all the time . Once in a while , they give
10:47:40 8 me a free meal up there , but that's about it .

10:47:43 9 Q. All right . I believe you
10:47:57 10 testified earlier this morning that you sold
10:47:59 11 some interest in the dump property or dump
10:48:04 12 operation at some point . Do you remember
10:48:05 13 giving that testimony ?

10:48:06 14 A. Yes . Yes . Uh-huh .

10:48:07 15 Q. What interest were you referring
10:48:09 16 to?

10:48:09 17 A. Well , all the dump property over
10:48:12 18 there in this -- the dump property and the
10:48:15 19 buildings and everything , when my father died ,
10:48:17 20 in his estate , he left in his will , he left
10:48:20 21 half to his widow and he left half to the four
10:48:23 22 children . Well , my two sisters and my brother
10:48:28 23 sold out to my step mother Kathy . I was -- my
10:48:34 24 one sister held onto her share for a while , a
10:48:37 25 couple , three years . I don't know . But

10:48:39 1 anyway , I -- I was going to hold onto mine and
10:48:43 2 then Cyril says he wanted to buy it. He wanted
10:48:46 3 to buy my one-sixteen th is what it amounts to.
10:48:51 4 He wanted to buy my one-sixteen th, and I kept
10:48:57 5 arguing with him and I was going through a
10:49:01 6 divorce at the time and I had to divide
10:49:03 7 everything , I had a company and a farm to
10:49:05 8 protect so I sold out to him.

10:49:07 9 Q. When did your father pass away ?

10:49:10 10 A. 1979 . It was September , I think .

10:49:15 11 Q. Approximately how long after that
10:49:17 12 did you sell your one-sixteen th owner ship to
10:49:22 13 Cyril ?

10:49:22 14 A. 1980 . He owed me a commission on
10:49:27 15 the property on the other side of 75, and he
10:49:30 16 argued about it , he didn't owe it to me , we
10:49:33 17 went back and forth , and so he sweetened the
10:49:36 18 pot and he says I'll pay you that commission ,
10:49:39 19 and that commission was about thirty-five
10:49:43 20 thousand dollars. So I said I'll take it.
10:49:45 21 Plus what I got -- what I inherited from my
10:49:47 22 father .

10:49:47 23 Q. Do you remember referring earlier
10:49:48 24 this morning to something called the South
10:49:50 25 Dayton Remediation Trust?

10:49:52 1 A. Yes .

10:49:52 2 Q. What is that ?

10:49:55 3 A. The south --

10:50:00 4 MR. HOFFMAN: Give it a try . I can
10:50:02 5 talk to Steve off-line about it . He's not going
10:50:04 6 to give you a real technical answer but go ahead .

10:50:09 7 THE WITNESS: Well , the South Dayton
10:50:11 8 Remediation Trust was formed -- my father was
10:50:15 9 dead . It was formed by Cyril Grillot and Jim
10:50:18 10 Kiefer who was his attorney at the time . And they
10:50:21 11 talked about the liability of this property .
10:50:27 12 Now -- and this is just my laymen 's understanding
10:50:30 13 that the liability for Margaret Grillot , Cyril 's
10:50:34 14 widow , she had no liability because she inherited
10:50:39 15 after the dump stopped operating , okay ? The
10:50:41 16 understanding was that my father 's widow , Kathryn
10:50:46 17 Boesch , inherited it while Alcine was still
10:50:48 18 operating that operation of his in the back , you
10:50:51 19 know , so she was liable .

10:50:53 20 So I understand this remediation
10:50:56 21 trust was formed with several of the companies
10:50:59 22 that had dumped there , that they would relieve the
10:51:02 23 ladies of liability for a half a million dollars .
10:51:06 24 Now , they've been paid two hundred thousand , we've
10:51:11 25 got three hundred thousand into it . Mark Fornes

10:51:13 1 and myself are the trustees for that , plus Mark
10:51:18 2 manages the property , Fornes Realty.

10:51:19 3 Q. Who are the companies that are
10:51:21 4 also part of this trust ?

10:51:22 5 A. I don't know . I never formed it .
10:51:26 6 I don't -- I don't know a thing about it .

10:51:29 7 Q. Was this trust formed because a
10:51:33 8 claim was asserted against your father 's estate
10:51:38 9 and --

10:51:39 10 A. No .

10:51:39 11 Q. -- Mr. Grillot 's estate ?

10:51:41 12 A. There was no claim against my
10:51:44 13 father 's estate , no . It was formed afterwards .

10:51:47 14 Q. Okay . Are you a beneficiary of
10:51:51 15 that trust or just trustee ?

10:51:52 16 A. I'm just a trustee of it . I don't
10:51:55 17 know whether I'm a beneficiary or not . If --
10:51:57 18 well , there's twenty-five acres in there where
10:52:00 19 all the foliage is and everything that my
10:52:05 20 stepmother in a will left her share of that
10:52:07 21 back to the trust . Now , Margaret Grillot owns
10:52:11 22 the other . She owns what -- what she's own --
10:52:16 23 nine -sixteen ths and my sisters and I own
10:52:22 24 seven -sixteen ths of the land . But the trust
10:52:25 25 is -- has some of the land there .

10:52:27 1 Q. Okay . I thought you had testified
10:52:31 2 earlier that you sold your interest in the land
10:52:34 3 in --

10:52:34 4 A. That's the first time . That's
10:52:36 5 when my father died . That's when my father
10:52:40 6 died in 1980 . So just this year we
10:52:43 7 re-inherited my stepmother 's part .

10:52:50 8 MR. HOFFMAN: I don't want to
10:52:51 9 interrupt , but you and I might want to talk
10:52:54 10 off-line . I can tell you all about that .

10:52:56 11 Q. So was this trust formed at least
10:52:59 12 in part to resolve any claims against the
10:53:02 13 estates ?

10:53:03 14 A. That's my understanding to the
10:53:04 15 best of my ability . All I know is what --
10:53:09 16 what -- of course , Cyril is deceased and Keifer
10:53:11 17 is deceased and Kiefer's partner , Jim Mitchell,
10:53:16 18 who's a title man , he told me that that's why
10:53:19 19 it was formed . All I know is what they told
10:53:22 20 me . I was no part of it until after I was
10:53:26 21 appointed trustee after Keifer died . I tried
10:53:33 22 to steer clear , but I got --

10:53:38 23 Q. Has a claim of liability ever been
10:53:40 24 asserted against you personally for the cleanup
10:53:43 25 of this site ?

10:53:44 1 A. No, sir .

10:53:51 2 MR. HAUGHEY: I'd like to go off the
10:53:52 3 record . Can you mark these documents .

10:53:52 4 (Thereupon, Boesch Exhibit Number 2
10:54:44 5 was marked for purposes of identification.)

10:54:44 6 (Thereupon, Boesch Exhibit Number 3
10:54:45 7 was marked for purposes of identification.)

10:54:45 8 Q. Jack , I've handed you two
10:55:02 9 exhibits . The first one is marked as Boesch
10:55:11 10 Exhibit 2 .

10:55:14 11 A. 2. Yes, sir .

10:55:14 12 Q. The other one , the thicker one is
10:55:20 13 Boesch Exhibit Number 3. Can you just look at
10:55:24 14 those two documents and let me know if you
10:55:27 15 recognize what -- and tell us what they are ,
10:55:31 16 please ?

10:55:31 17 A. They are records of the testimony
10:55:33 18 that I had given two prior times .

10:55:36 19 Q. Okay . Is Exhibit 2 the deposition
10:55:38 20 you gave in 2006 ?

10:55:40 21 A. That's it .

10:55:44 22 Q. And Exhibit 3 the deposition you
10:55:46 23 gave in 2011 ?

10:55:48 24 A. Yes, sir .

10:55:48 25 Q. Okay . Thank you . Did you have an

10:55:53 1 opportunity to review the depositions before
10:55:55 2 your testimony here today ?

10:55:56 3 A. I've got copies of them . Yes,
10:56:01 4 sir .

10:56:02 5 Q. Did you have an opportunity to
10:56:03 6 review them again ?

10:56:04 7 A. Yes .

10:56:04 8 Q. To the best of your knowledge and
10:56:07 9 recollection and belief , is the testimony that
10:56:09 10 you gave in those two earlier depositions still
10:56:14 11 accurate and truthful today ?

10:56:15 12 A. Yes, sir .

10:56:16 13 Q. I'm sorry , what was your response ?

10:56:18 14 A. Yes, sir .

10:56:19 15 Q. Today is the third deposition
10:56:26 16 you've given with respect to this site ,
10:56:26 17 correct?

10:56:28 18 A. Yes, sir .

10:56:29 19 Q. Do the two depositions that you
10:56:37 20 have before you , the two exhibits and today 's
10:56:41 21 testimony cover all of the entities that you
10:56:45 22 can remember ever disposing of waste at this
10:56:48 23 site ?

10:56:48 24 A. To the best of my knowledge , yes .

10:56:50 25 Q. Do the two depositions before you

10:56:55 1 and today 's testimony cover all waste hauling
10:57:00 2 companies that you can remember ever hauling
10:57:02 3 waste to the site ?

10:57:03 4 A. To the best of my ability , yes .

10:57:05 5 Q. Do you have a recollection of any
10:57:11 6 other entities disposing of waste at the site
10:57:15 7 who are not mentioned in either of the two
10:57:20 8 depositions or in your testimony today ?

10:57:22 9 A. No, sir .

10:57:25 10 MR. HAUGHEY: Thank you . I have no
10:57:26 11 other questions .

10:57:44 12 MR. SILVER: Anyone else ?

10:57:51 13 MR. HARBECK: I do. I have several .

10:57:51 14 CROSS-EXAMINATION

10:57:52 15 BY MR. HARBECK:

10:57:52 16 Q. My name is Bill Harbeck . I
10:58:04 17 represent Waste Management of Ohio . I just
10:58:06 18 have several questions for you .

10:58:08 19 A. Yes, sir .

10:58:09 20 MR. HARBECK: Can you mark this as
10:58:10 21 Exhibit 4 ?

10:58:10 22 (Thereupon, Boesch Exhibit Number 4
10:59:06 23 was marked for purposes of identification.)

10:59:06 24 Q. Mr. Boesch , have you had a chance
10:59:17 25 to look at Exhibit 4 ?

10:59:18 1 A. Not completely , no, sir .

10:59:20 2 Q. Okay . Go ahead . Tell me when
10:59:22 3 you're finish ed .

10:59:30 4 (Pause in proceedings.)

11:00:09 5 THE WITNESS: Yes, sir .

11:00:10 6 Q. I have just a couple questions
11:00:11 7 about this exhibit . First of all , at the
11:00:14 8 bottom , next to where your exhibit sticker is ,
11:00:18 9 there's a sticker that says PRP Number 1. Do
11:00:22 10 you see that ?

11:00:23 11 A. Yes .

11:00:23 12 Q. Is this -- this was marked at your
11:00:27 13 February 28 , 2006 deposition as an exhibit .

11:00:32 14 A. Yes, sir .

11:00:32 15 Q. And my question regarding this
11:00:35 16 exhibit is, are the statements -- and this is
11:00:37 17 an affidavit that you had prepared prior to
11:00:39 18 that deposition , correct ? Correct?

11:00:42 19 A. Yes .

11:00:42 20 Q. Okay . Are the statements in
11:00:46 21 Exhibit 4 truthful and accurate ?

11:00:47 22 A. Yes, sir , to the best of my
11:00:55 23 knowledge .

11:00:55 24 Q. Okay . I think you testified to
11:01:03 25 this at your 2006 deposition . I just want to

11:01:06 1 make sure . Under paragraph 5A , Dayton Steel

11:01:12 2 Foundry , do you see that ?

11:01:13 3 A. Yes, sir .

11:01:14 4 Q. That's the same as Dayton -Walther
11:01:18 5 Company?

11:01:18 6 A. Yes .

11:01:18 7 Q. And then paragraph 5B discusses
11:01:21 8 Frigidaire ?

11:01:22 9 A. Yes, sir .

11:01:22 10 Q. We talked a little bit about
11:01:23 11 Frigidaire today, right?

11:01:23 12 A. Yes.

11:01:23 13 Q. Frigidaire was one of the
11:01:24 14 companies , a company that you said brought in
11:01:27 15 drums with metal shavings ?

11:01:28 16 A. Yes, sir .

11:01:28 17 Q. And during that 2006 deposition ,
11:01:31 18 you also testified that there were other
11:01:34 19 companies that brought in drums with metal
11:01:37 20 shavings . Do you remember that ? In your 2006
11:01:42 21 deposition .

11:01:43 22 A. Yes , I probably did because Kenny
11:01:47 23 used to gather those when they'd take them off
11:01:50 24 the truck at the dump building and put them in
11:01:54 25 the back there because they didn't dump those

11:01:56 1 into the ground . They would a lot of times
11:01:59 2 ship them right to the scrap iron people , you
11:02:01 3 know.

11:02:01 4 Q. But let me ask it, though. With
11:02:04 5 respect to the Frigidaire metal shavings , you
11:02:07 6 described them coming in and you said that
11:02:09 7 material would be dumped over the bank .

11:02:11 8 Do you see that in paragraph 5B and
11:02:15 9 the two little IIs.

11:02:17 10 A. Well , they probably did dump some
11:02:25 11 over the bank because sometimes Kenny couldn't
11:02:29 12 get to them in time .

11:02:30 13 Q. Okay. My only other question is
11:02:31 14 with respect to any other company that brought
11:02:34 15 in metal shavings in drums , was it the typical
11:02:37 16 practice that sometimes those drums would also
11:02:40 17 be dumped over the side?

11:02:43 18 A. Could have been. Yes, sir .

11:02:44 19 Q. The wood burning machine that you
11:02:50 20 testified a little bit about , as far as you
11:02:52 21 know , was that operated by Alcine Grillot ?

11:02:55 22 A. Yes, sir .

11:02:55 23 Q. To your knowledge , did anyone else
11:02:58 24 have anything to do with the operation or
11:03:00 25 ownership of that wood burning machine ?

11:03:03 1 A. No, sir. Not to my knowledge
11:03:05 2 because Kenny was dead then when Alcine was
11:03:07 3 running that. That was his brother that had
11:03:10 4 came to work for him.

11:03:11 5 Q. Okay.

11:03:12 6 A. With him.

11:03:13 7 Q. When did the South Dayton Dump
11:03:18 8 cease the dumping operations ?

11:03:20 9 A. You know, I was trying to think.
11:03:40 10 Well, it had to be after 1979 because they were
11:03:48 11 still doing some then. But I don't know what
11:03:52 12 amount they were doing then because when my
11:03:57 13 father passed away, Cyril took the tax material
11:04:01 14 and everything down to Ed Hence and I -- after
11:04:05 15 that, I steered clear of it. When I sold out
11:04:09 16 to Cyril in 1980, I never went back.

11:04:13 17 Q. Okay. I just want your
11:04:17 18 understanding. Did the dump then continue
11:04:19 19 throughout the 1980s?

11:04:21 20 A. I don't think it was active then.
11:04:23 21 I really don't because I think -- I think Kenny
11:04:27 22 was dead and Alcine had -- no, because I know
11:04:31 23 my one sister, I remember, that kept her share
11:04:34 24 for several years said that they weren't making
11:04:38 25 the money off -- that the dump used to produce.

11:04:41 1 I said well , what do you expect , they shut it
11:04:45 2 down .

11:04:45 3 Q. This was in the 1980s ?

11:04:48 4 A. Yes, sir . But I don't know
11:04:49 5 exactly what time it was in the 1980s . It was
11:04:53 6 very limited during the '80s that I can think
11:04:56 7 of because they were trying to shut it down at
11:04:58 8 the time .

11:04:58 9 Q. Okay . Thank you . The remediation
11:05:04 10 trust that you were testifying about , and you
11:05:06 11 said five hundred thousand dollars was set
11:05:07 12 aside ?

11:05:08 13 A. Yes, sir .

11:05:08 14 Q. And what's happened to that money ?

11:05:11 15 A. Well , two hundred thousand has
11:05:14 16 been paid to the group that accepted the
11:05:18 17 liability for dumping there , you know .

11:05:20 18 Q. What group is that ?

11:05:21 19 A. Well , it's -- what do they call
11:05:25 20 that group ? Remediation trust ?

11:05:28 21 MR. HOFFMAN: If you don't know , say
11:05:29 22 you don't know .

11:05:30 23 THE WITNESS: Okay . I -- I don't
11:05:35 24 know . Really , I don't know a whole lot about it
11:05:38 25 because I never dealt with them as such . I'm just

11:05:42 1 carrying out the -- what the trust was set up for .
11:05:46 2 I was an after trustee . I wasn't an early trustee
11:05:50 3 in that . And I just became a trustee about two
11:05:54 4 years ago . All I know is they made an agreement
11:05:57 5 to be relieved of liability by some of the
11:06:00 6 companies that dump there and that -- that the
11:06:07 7 ladies paid a half million dollars -- agreed to
11:06:12 8 pay a half a million dollars to be relieved of
11:06:16 9 liability .

11:06:16 10 Now , like I say before , I think
11:06:18 11 Margaret was relieved -- I think, I don't know
11:06:21 12 this -- but she inherited after the dump was
11:06:23 13 closed . My stepmother inherited while the dump
11:06:28 14 was still in some form of operation in 1979 . So
11:06:32 15 this was put up by them to relieve them of
11:06:36 16 liability . One was a hundred and two and one is
11:06:37 17 ninety -two . I mean, you know. So we still have
11:06:42 18 in the trust three hundred thousand dollars that
11:06:47 19 is -- that has to be paid to this group when they
11:06:50 20 settle everything , if they ever settle it. I
11:06:53 21 don't know .

11:06:53 22 Q. Is the group that you're talking
11:06:55 23 about the group that's currently under taking
11:06:58 24 the investigation , the site investigation , at
11:07:01 25 the site ?

11:07:01 1 A. Yes, sir.

11:07:01 2 Q. Okay.

11:07:01 3 A. That's correct .

11:07:02 4 Q. Is that the Plaintiff s here , NCR ,
11:07:10 5 Hobart, and Dayton -Walther ?

11:07:10 6 A. Yes .

11:07:11 7 Q. Is there a written document that
11:07:14 8 reflect s this agreement whereby you are
11:07:15 9 paying -- you've paid them two hundred and
11:07:17 10 people got relieved of liability ?

11:07:19 11 A. I assume there is someplace along
11:07:21 12 the line .

11:07:22 13 Q. Okay . And it's your understanding
11:07:23 14 that the remaining three hundred thousand that
11:07:25 15 has not yet been paid over to this group
11:07:28 16 ultimately , the obligation is that it will be
11:07:31 17 paid over to the group ?

11:07:32 18 A. Yes, sir .

11:07:33 19 Q. And when does that payment take
11:07:35 20 place , as far as you know ?

11:07:36 21 A. I don't know when it takes place .
11:07:38 22 I guess we can give it to them and try it to
11:07:42 23 settle it . But --

11:07:42 24 Q. Okay.

11:07:43 25 A. -- there's no date on it , as far

11:07:44 1 as I know .

11:07:45 2 Q. Is that a document -- and I could
11:07:52 3 ask your lawyer this , if you want -- but you
11:07:55 4 could turn over to the rest of us so we can see
11:07:58 5 what it says regarding the relieving of
11:08:01 6 liability and the payment to the group ?

11:08:03 7 MR. HARBECK: If you want to talk
11:08:03 8 about his off-line --

11:08:04 9 MR. HOFFMAN: We should have a
11:08:05 10 discussion about that off the record .

11:08:09 11 MR. HARBECK: That's fine . If the
11:08:10 12 Plaintiffs have it , which I assume they do , I
11:08:12 13 would make a request on the record for that
11:08:14 14 document , which I do not believe has been produced
11:08:17 15 today .

11:08:22 16 MR. SILVER: Request acknowledge d on
11:08:26 17 the record .

11:08:26 18 Q. Besides this five hundred thousand
11:08:31 19 dollars , part of which has been paid and part
11:08:33 20 of it which will be paid , have there been any
11:08:37 21 other payments made by anybody connected to the
11:08:42 22 ownership or operation of the South Dayton
11:08:45 23 Dump , by the Boesch s , by any of the Grillots ,
11:08:47 24 anybody else that has been made to the
11:08:51 25 Plaintiffs or EPA with respect to the potential

11:08:54 1 liability at the South Dayton Dump ?

11:08:56 2 A. Not to my knowledge .

11:08:57 3 Q. And did you say now you are back

11:09:01 4 in the saddle ? Are you now current owner again

11:09:03 5 of some of the South Dayton Dump area ?

11:09:07 6 A. Yes . I own about one - sixteen th

11:09:12 7 and a fraction .

11:09:12 8 Q. And is that as a result of your

11:09:15 9 stepmother dying ?

11:09:15 10 A. My stepmother dying . Her will

11:09:18 11 left the properties back to my sisters and I.

11:09:20 12 My sister - in - law , my sisters , and I . The four

11:09:24 13 of us .

11:09:24 14 Q. Okay . So you got rid of your

11:09:26 15 one - sixteen th shared that you inherited from

11:09:30 16 your father back in 1980 , you got rid of that ,

11:09:31 17 you sold that to Cyril ?

11:09:32 18 A. Yes .

11:09:32 19 Q. And now recent ly you've gotten --

11:09:36 20 A. Gotten it back . Gotten part of it

11:09:39 21 back .

11:09:39 22 Q. So who are -- at this point , who

11:09:41 23 are the other owners of the South Dayton Dump

11:09:46 24 landfill besides yourself ?

11:09:48 25 A. Okay . The other owners right now

11:09:52 1 are Margaret Grillot , Cyril's widow, who owns
11:09:56 2 nine -sixteen ths , my sister Barbara Wannamacher,
11:10:08 3 W A N N A M A C H E R. Barbara L. Wannamacher .
11:10:19 4 Natalie Boesch . And Paulita, P A U L I T A,
11:10:30 5 Boesch . And myself .

11:10:33 6 Q. And you said you're a
11:10:42 7 one -sixteenth plus a little bit more ?

11:10:44 8 A. Well , we got seven-sixteenths. So
11:10:50 9 there's four of us. So we each got
11:10:51 10 one-sixteenth plus a fraction.

11:10:51 11 Q. Okay. So you each own an equal
11:10:55 12 amount of that seven- sixteen ths?

11:10:57 13 A. Yes, sir .

11:10:58 14 Q. Did -- and did you say that
11:11:04 15 there's some agreement or deed or understanding
11:11:09 16 in terms of having that ownership interest
11:11:14 17 being transferred to the remediation trust ?
11:11:17 18 You said something about that . I didn't quite
11:11:19 19 understand it .

11:11:20 20 A. Well , there's one part of it that
11:11:22 21 was twenty-five acres . The buildings were
11:11:27 22 transferred back to my sister and I. My two
11:11:30 23 sisters and my sister-in-law and I. Okay ?
11:11:34 24 That's the seven- sixteenths. There's a
11:11:38 25 twenty-five acre tract where the foliage is in

11:11:42 1 back on that picture that you have that was
11:11:45 2 transferred -- my stepmother left that in her
11:11:48 3 will to the remediation trust with some money
11:11:50 4 to take care of their obligation in the trust .
11:11:57 5 In other words, pay our attorney fees and
11:11:59 6 things like that .

11:11:59 7 Q. And , I'm sorry , your mother left
11:12:07 8 that ?

11:12:07 9 A. My stepmother left that . Yeah.

11:12:23 10 MR. HARBECK: Thank you very much .

11:12:25 11 CROSS-EXAMINATION

11:12:25 12 BY MR. ANDREASEN:

11:12:25 13 Q. Mr. Boesch , my name is John
11:12:28 14 Andreasen . I just have a couple questions to
11:12:32 15 possibly try and clarify some things .

11:12:35 16 When did you become a trustee of the
11:12:38 17 remediation trust ?

11:12:40 18 A. Oh, it was approximately two years
11:12:43 19 ago , I guess , when Jim Keifer died . He was one
11:12:46 20 of the trustees . He was the attorney for
11:12:51 21 Mr. Grillot and stepmother .

11:12:53 22 Q. I'm sorry . How many trustees are
11:12:55 23 there currently ?

11:12:56 24 A. Two .

11:12:56 25 Q. And who's the other trustee

11:12:58 1 besides yourself ?

11:13:00 2 A. Mark Fornes . F O R N E S. Mark
11:13:04 3 Fornes, realtor. He manages the properties .
11:13:12 4 And I currently have my license with him .

11:13:15 5 Q. And prior to you and Mr. Fornes ,
11:13:26 6 other than Mr. Keifer , who else would have been
11:13:30 7 trustees of the remediation trust ?

11:13:33 8 A. To my -- the best of my knowledge ,
11:13:36 9 only the three of us .

11:13:37 10 Q. So before -- let me strike that .
11:13:47 11 When you replaced Mr. Keifer as trustee , was
11:13:54 12 Mark Fornes a trustee at that time ?

11:13:55 13 A. Yes, sir .

11:13:55 14 Q. Were he and Mr. Keifer the
11:13:58 15 original two trustees ?

11:13:59 16 A. Yes, sir . I think . To the best
11:14:02 17 of my knowledge . Like I said, I steered clear
11:14:05 18 of everything until I got it back here .

11:14:08 19 Q. And I apologize if you already
11:14:13 20 stated this . But when was the remediation
11:14:15 21 trust established ?

11:14:16 22 A. I really don't know , to be honest
11:14:24 23 with you . I'm trying to think . Because , see ,
11:14:26 24 I stayed clear of all that . I don't know .
11:14:33 25 Maybe sometime in the -- I don't know , if it

11:14:39 1 was established when that first testimony, in
11:14:41 2 2006 . It may be in the '90s, late '90s
11:14:45 3 someplace , but I couldn't swear to the
11:14:47 4 establishment of that trust .

11:14:48 5 Q. I believe you testified that the
11:14:56 6 original five hundred thousand dollars came
11:15:02 7 from --

11:15:03 8 A. Margaret Grillot and Kathryn
11:15:05 9 Boesch . They were the two owners at the time .

11:15:08 10 Q. And had that money come from
11:15:19 11 operations of the landfill ?

11:15:20 12 A. No. No. This was -- they paid
11:15:23 13 individually . They put up two hundred and
11:15:26 14 fifty thousand apiece .

11:15:27 15 Q. Do you know who requested that
11:15:43 16 they make those payments into the remediation
11:15:45 17 trust ?

11:15:46 18 A. I think Mr. Keifer was active in
11:15:49 19 setting that up, that remediation trust . He
11:15:52 20 was their attorney at the time , along with -- I
11:16:03 21 said along with Tim . Tim came in afterwards .
11:16:07 22 I don't know . I don't know the dates . I know
11:16:09 23 that Keifer recommended the ladies set up the
11:16:13 24 trust . I think he set it up . I wouldn't swear
11:16:16 25 to it .

11:16:16 1 Q. And just so we have a clear
11:16:27 2 record , besides yourself and Margaret Grillot ,
11:16:36 3 the other three women who are part owners of
11:16:40 4 the landfill properties , Barbara Wannamacher ,
11:16:43 5 is that your sister ?

11:16:45 6 A. My sister . Yes, sir .

11:16:46 7 Q. Natalie Boesch , is that your
11:16:49 8 sister ?

11:16:49 9 A. That's my sister-in-law .

11:16:51 10 Q. And then Paul ita Boesch would be
11:16:55 11 your other sister ?

11:16:56 12 A. That's my sister . Yes .

11:16:58 13 Q. Who holds the funds of the
11:17:08 14 remediation trust ?

11:17:09 15 A. The three hundred thousand dollars
11:17:12 16 is deposited with Third -- Third National --
11:17:16 17 well , Key Bank . I get their -- Third , Society ,
11:17:22 18 Key . Key Bank . Lisa Orr has that . They're in
11:17:29 19 certificates of deposit .

11:17:30 20 Q. And Key Bank is -- used to be
11:17:37 21 Third N ational B ank ; is that correct ?

11:17:39 22 A. Yeah .

11:17:40 23 Q. Was the original five hundred
11:17:42 24 thousand dollars deposited with Third National
11:17:45 25 Bank?

11:17:45 1 A. I don't know . I imagine it was
11:17:51 2 because that's what Grillo and Boesch had used
11:17:54 3 for years . So I imagine it was . I can't swear
11:17:57 4 to it .

11:17:57 5 Q. And , again , just so the record is
11:18:09 6 clear , besides the -- in addition to the
11:18:13 7 original five hundred thousand dollars , the
11:18:19 8 only other asset of the trust is the
11:18:22 9 twenty-five acres that your stepmother gave to
11:18:27 10 the trust ?

11:18:27 11 A. Yes . And she -- she left fifty
11:18:32 12 thousand to the trust to operate the trust , pay
11:18:35 13 the legal fees , things like that for the
11:18:39 14 administration .

11:18:39 15 Q. Let me back up then . I want to
11:18:42 16 make sure we're clear on this . Your stepmother
11:18:42 17 --

11:18:49 18 MR. HOFFMAN: Let me interrupt for a
11:18:50 19 second . I don't want to cut you off , but there's
11:18:53 20 a better person to ask those questions . I think
11:18:55 21 you're asking Jack some questions he's really
11:18:59 22 trying to be helpful on , but he doesn't know the
11:19:02 23 answer to . If you want to have a discussion off
11:19:05 24 the record after you're done with Jack , I can
11:19:12 25 explain better .

11:19:13 1 MR. ANDREASEN: I understand .

11:19:14 2 Q. But if you know , your mother paid
11:19:18 3 two hundred and fifty thousand dollars and
11:19:20 4 donated twenty-five acres and paid an
11:19:23 5 additional fifty thousand dollars ?

11:19:25 6 A. (Witness nods head up and down.)

11:19:30 7 Q. Would you say yes or no?

11:19:33 8 A. Yes . I'm sorry .

11:19:36 9 MR. ANDREASEN: That's all I have .
11:19:37 10 Thank you very much .

11:19:37 11 CROSS-EXAMINATION

11:19:37 12 BY MS. WRIGHT:

11:19:41 13 Q. Mr. Boesch , my name is Vicki
11:19:43 14 Wright , and I represent Pharmacia , LLC, which
11:19:46 15 is handling the interest of the company you
11:19:48 16 would recall as Monsanto Company.

11:19:51 17 I've got a few questions . I just
11:19:53 18 want to clarify . If you can take a look at
11:19:56 19 Exhibit 4 , which is that affidavit that we were
11:20:01 20 just talking about with Mr. Harbeck. It's also
11:20:04 21 marked as PRP 1.

11:20:07 22 A. Yes .

11:20:09 23 Q. If you could , turn to the second
11:20:11 24 page and take a look there . There's a
11:20:14 25 reference to Monsanto .

11:20:30 1 (Thereupon, an off-the-record
11:20:30 2 discussion was had.)

11:20:32 3 Q. Have you had a moment to read
11:20:34 4 that ?

11:20:34 5 A. Yes .

11:20:35 6 Q. Okay . Can you also now take a
11:20:37 7 look at what's been marked as Exhibit 2 , which
11:20:40 8 is the deposition transcript ?

11:20:45 9 A. Yes .

11:20:45 10 Q. Do you see that ?

11:20:47 11 A. Yes , I do.

11:20:47 12 Q. If you would do me a favor and
11:20:51 13 turn to page 86 of that transcript , I would
11:20:55 14 appreciate it .

11:20:56 15 A. Yes .

11:20:56 16 Q. If you look about halfway down
11:21:18 17 that page , you'll see an entry from the
11:21:20 18 transcript that has my name next to it and it
11:21:23 19 has me introducing what's called PRP Exhibit 1 ,
11:21:27 20 which is the affidavit you were just looking
11:21:30 21 at .

11:21:31 22 Can you read -- we can take a break ,
11:21:36 23 as long as you need. I'd like for you to reread
11:21:38 24 your testimony , 86 to 87, and then I've got a few
11:21:43 25 questions .

11:21:44 1 (Pause in proceedings.)

11:22:58 2 THE WITNESS: Okay . Yes , ma'am .

11:23:00 3 Q. Thank you . Is it fair to say that
11:23:02 4 you do not have any firsthand knowledge what
11:23:04 5 was contained in any Monsanto trucks that you
11:23:07 6 saw at the South Dayton Dump ?

11:23:09 7 A. That is correct .

11:23:11 8 MS. WRIGHT: That's all I have .

11:23:12 9 Thank you .

11:23:26 10 MR. SILVER: Anyone else ? I have a
11:23:30 11 couple of follow -ups .

11:23:32 12 MR. HAUGHEY: Can I ask him one so
11:23:34 13 you don't have to follow up twice ?

11:23:36 14 MR. SILVER: Sure .

11:23:36 15 FURTHER CROSS-EXAMINATION

11:23:37 16 BY MR. HAUGHEY:

11:23:37 17 Q. Mr. -- Jack , this is Steve Haughey
11:23:41 18 again .

11:23:41 19 Do you know if an attorney or an
11:23:43 20 accountant helped Alcine or Cyril or Kenny do
11:23:49 21 their tax returns ?

11:23:51 22 A. I don't know anything about Alcine
11:23:54 23 or Kenny and their tax returns . I do know that
11:24:00 24 Mr. Hence did Grillot and Boesch, and I think
11:24:06 25 he did , but I don't know for sure , but I think

11:24:09 1 he did Cyril's because Mr. Dix, who was his
11:24:11 2 successor, just did Margaret Grillot 's the
11:24:13 3 other day . So I just assumed that he did
11:24:16 4 Cyril 's, too, because whatever Dad did, Cyril
11:24:19 5 usually went along with . Once in a while
11:24:21 6 they'd get in a --

11:24:22 7 Q. What's Mr. Dix's first name ,
11:24:25 8 please ?

11:24:25 9 A. That's a good question . If you
11:24:27 10 got a phonebook , I could probably look it up
11:24:29 11 for you . I don't know if they have phone books
11:24:32 12 anymore .

11:24:32 13 Q. His last name is spelled D I X?

11:24:35 14 A. Yes .

11:24:35 15 Q. And can you state again to the
11:24:38 16 best of your knowledge where his office is
11:24:41 17 located ?

11:24:41 18 A. Yeah . It's located on northbound
11:24:45 19 South Dixie here in Kettering . Just as you
11:24:50 20 come up the hill before you get to Dorothy Lane
11:24:53 21 in the old shopping center there, Christopher
11:24:54 22 Club, there's some white building s on the
11:24:57 23 right . I think Grant owns the bigger office
11:25:01 24 building , but this is on the right . There's a
11:25:03 25 white building up there . I'm trying to think

11:25:06 1 of the name of that street . There's about
11:25:07 2 three or four of them when they first came to
11:25:10 3 town , they put them up there . But that was
11:25:12 4 years ago . But he's in one of those buildings .
11:25:17 5 MR. HAUGHEY: Okay. Thank you .
11:25:18 6 That's all I have .
11:25:18 7 THE WITNESS: I know the building
11:25:20 8 because it used to be owned by Dr. O'Leary and I
11:25:24 9 went to O'Leary .
11:25:28 10 MR. SILVER: Is that it, Steve ?
11:25:31 11 MR. HAUGHEY: Yes , that's all .
11:25:33 12 MR. SILVER: Thank you .
11:25:33 13 REDIRECT EXAMINATION
11:25:34 14 BY MR. SILVER:
11:25:34 15 Q. Might it be Michael Dix ?
11:25:45 16 A. Michael Dix might be it .
11:25:47 17 Q. All right . Just a couple more
11:25:49 18 questions for you , Jack .
11:25:51 19 Focusing on what's been marked as
11:25:55 20 Boesch Exhibit 4 in front of you , it's the
11:25:57 21 affidavit --
11:25:58 22 A. Yes, sir .
11:26:04 23 Q. -- I just wanted to ask you about
11:26:05 24 paragraph two . You mentioned that -- from 1960
11:26:13 25 to 1967 , you maintained the real estate office

11:26:16 1 located near the entrance of the site and was
11:26:19 2 at the site approximately five times per week .

11:26:22 3 So that -- is it your recall that you
11:26:27 4 had that office until '67, not '66 .

11:26:32 5 A. I'm trying to think what year I
11:26:39 6 bought that building in Bellbrook . I could
11:26:51 7 probably have been there until '67 .

11:26:54 8 Q. All right. And then you
11:26:56 9 testified --

11:26:56 10 A. I had the desk there and stuff .
11:26:57 11 But I really didn't -- because I'm pretty sure
11:27:00 12 I bought that building in Bellbrook in '66 .
11:27:05 13 And I moved an office and put some agents in
11:27:08 14 down there . And I'd usually go to the
11:27:10 15 Bellbrook one the first thing in the morning ,
11:27:13 16 then I'd go over to Moraine in the afternoon .

11:27:15 17 Q. Okay . And that was after you
11:27:17 18 bought Bellbrook ?

11:27:18 19 A. Yes, sir .

11:27:18 20 Q. So are you kind of modifying your
11:27:22 21 testimony earlier that you only really was
11:27:27 22 going -- going to Moraine until '64 ? Do you
11:27:30 23 remember saying that earlier today ?

11:27:32 24 A. Well, that's when I -- yes, I -- I
11:27:39 25 would say that this one is probably more

11:27:42 1 accurate when I stop and think about it because
11:27:44 2 I'm not sure what year I bought that building
11:27:47 3 in Bellbrook . That's my biggest problem
11:27:50 4 because I spent part of my time there and part
11:27:52 5 of my time I'd go over to Moraine in the
11:27:54 6 after noon.

11:27:54 7 Q. Same day , morning and afternoon ?

11:27:56 8 A. Yes, sir .

11:27:57 9 Q. So when you say this one is more
11:27:59 10 accurate , you're referring to the affidavit ,
11:28:02 11 Boesch Exhibit 4 ?

11:28:03 12 A. The affidavit . Yes, sir .

11:28:05 13 Q. All right . And then I had a
11:28:07 14 question , you were asked by Mr. Harbeck earlier
11:28:12 15 about the wood burning operation and who owned
11:28:13 16 it and who operated it. Now , I just want to
11:28:19 17 remind -- mention , didn't you testify earlier
11:28:22 18 today that you had only seen the wood burning
11:28:25 19 operation once whether Cyril took you back
11:28:28 20 there?

11:28:29 21 A. That I had seen it, yes . I think
11:28:30 22 that was to the best of my knowledge . I never
11:28:33 23 went back there . I had no reason to go back
11:28:36 24 there . That was way back in the back . And I
11:28:38 25 didn't even know Alcine was still operating it.

11:28:40 1 Q. So your best memory is that you
11:28:43 2 only went back there once ?

11:28:44 3 A. Once . Yes, sir .

11:28:45 4 Q. So you really don't have a very
11:28:47 5 good idea of who owned it, do you ?

11:28:50 6 MR. HARBECK: Object to the form of
11:28:51 7 the question .

11:28:52 8 Q. You can answer .

11:28:56 9 A. Who owned the operation ?

11:28:57 10 Q. The wood burning operation in
11:28:59 11 particular .

11:28:59 12 A. Well , I think that was all
11:29:01 13 Alcine's .

11:29:02 14 Q. But do you really know who owned
11:29:04 15 it ?

11:29:05 16 MR. HARBECK: Object .

11:29:06 17 THE WITNESS: We didn't own it .

11:29:07 18 Q. Who's we ?

11:29:08 19 A. Grillot and Boesch didn't own it .

11:29:10 20 Q. Could someone other than Alcine
11:29:13 21 have owned it ?

11:29:14 22 MR. HARBECK: Object to the form of
11:29:15 23 the question . Calls for speculation .

11:29:17 24 Q. You can answer .

11:29:18 25 A. I don't know . I don't know . I do

11:29:22 1 know -- the only thing I can tell you is I do
11:29:25 2 know that they had a palletizing operation up
11:29:27 3 in the front off of South Broadway down at the
11:29:30 4 end of this picture, that -- it doesn't really
11:29:34 5 show like it did, and the ladies had to clean
11:29:38 6 up -- but next to Cyril 's last piece of ground
11:29:41 7 down there coming along the DP&L big
11:29:45 8 right-of-way for their towers that would go
11:29:47 9 across the river there . But I don't -- I don't
11:29:51 10 think that man had any interest in it but maybe
11:29:55 11 he did . I don't know. As far as I know , only
11:29:57 12 Alcine Grillot .

11:29:57 13 Q. Let me ask you this question . Do
11:29:59 14 you know , do you have knowledge of who all the
11:30:02 15 owners were of the wood burning operation that
11:30:05 16 we've been referring to?

11:30:08 17 MR. HARBECK: Objection . Asked and
11:30:08 18 answered .

11:30:09 19 Q. You can answer .

11:30:10 20 MR. HOFFMAN: If you know .

11:30:11 21 Q. If you know . I'm asking if you
11:30:13 22 know of all the owners . Do you have personal
11:30:16 23 knowledge of who all the owners were ?

11:30:18 24 A. That's a good question because it
11:30:23 25 could have been part of that twenty acres that

11:30:25 1 went to the conservancy . It was right next to

11:30:28 2 that lake back there . I couldn't swear to it .

11:30:31 3 MR. HOFFMAN: So is your answer I

11:30:32 4 don't know , Jack ?

11:30:33 5 THE WITNESS: I don't know .

11:30:34 6 Q. And you don't know who all the

11:30:37 7 operators of the wood burning operation were ,

11:30:39 8 you only saw it once ?

11:30:41 9 MR. HARBECK: Object to the form of

11:30:41 10 the question .

11:30:41 11 Q. You can go ahead . Go ahead , Jack .

11:30:44 12 A. I don't know . I really don't know

11:30:47 13 who all the operators were . There could have

11:30:49 14 been a thousand of them , as far as I know .

11:30:51 15 MR. SILVER: Thank you . No further

11:30:52 16 questions .

11:30:55 17 MS. KAUFMAN: I have a question on

11:30:56 18 one of the exhibits that was introduced .

11:30:56 19 RECROSS-EXAMINATION

11:30:58 20 BY MS. KAUFMAN:

11:30:58 21 Q. Mr. Boesch , I just have a question

11:31:12 22 about Exhibit Number 4 , which is your

11:31:15 23 affidavit . This affidavit states that you

11:31:22 24 regularly observe d people coming to dispose of

11:31:25 25 materials at the site and the following

11:31:30 1 companies regularly dumped industrial material
11:31:33 2 at the site . One of the companies that's
11:31:35 3 listed is Harris Sebold .

11:31:37 4 Do you have personal knowledge that
11:31:38 5 they dumped materials at the site ?

11:31:40 6 A. Yes , I do . I saw their truck go
11:31:46 7 in .

11:31:46 8 Q. Okay . Do you have any personal
11:31:49 9 knowledge that they dumped foundry cores at the
11:31:53 10 site ?

11:31:53 11 A. Not really , to be honest with you .
11:31:56 12 I just had -- the only thing I can say is Kenny
11:32:03 13 said they were one of the companies that dumped
11:32:05 14 foundry cores .

11:32:06 15 Q. So Kenny said that --

11:32:09 16 A. Yes .

11:32:09 17 Q. -- to you ?

11:32:10 18 MS. KAUFMAN: Okay . Thank you .

11:32:12 19 MR. SILVER: Anyone else ?

11:32:12 20 RECROSS-EXAMINATION

11:32:15 21 BY MR. HAUGHEY:

11:32:15 22 Q. This is Steve Haughey . Has
11:32:21 23 Margaret Grillot been deposed ?

11:32:23 24 A. I don't think so . I don't know .

11:32:28 25 Q. How old is she ?

11:32:29 1 A. Ninety -two .

11:32:31 2 Q. And her husband again was --

11:32:39 3 A. Cyril J Grillot .

11:32:42 4 Q. Do you know why she has not been
11:32:45 5 deposed to the best of your knowledge?

11:32:45 6 A. To the best of my knowledge , she
11:32:47 7 had no idea of the dump operation . None
11:32:52 8 whatsoever .

11:32:52 9 Q. Do you know if she has any records
11:32:59 10 of her husband 's that were related to the
11:33:02 11 landfill ?

11:33:03 12 A. No. We looked in a -- she lives
11:33:08 13 in Indian Creek down there in a condominium ,
11:33:12 14 and we looked in her storage shed for records
11:33:16 15 about a year ago . We couldn't find a thing .
11:33:18 16 There was nothing there pertaining to any of
11:33:20 17 that business . I don't think Cyril kept any
11:33:23 18 personally . I think they were all part of what
11:33:25 19 he and Dad had at the office . Dad had the
11:33:28 20 records , and I don't know what happened to
11:33:29 21 them .

11:33:31 22 MR. HAUGHEY: Okay . Thank you .

11:33:36 23 MR. SILVER: Are we done ?

11:33:36 24 MR. CAMPBELL: One question.

11:33:36 25 CROSS-EXAMINATION

11:33:41 1 BY MR. CAMPBELL:

11:33:41 2 Q. Mr. Boesch , looking at this
11:33:43 3 Exhibit 4 , if there's a disagreement between
11:33:45 4 this affidavit and the testimony you've given
11:33:48 5 today , would you say that the affidavit would
11:33:50 6 be a more accurate source of information for us
11:33:53 7 to rely on ?

11:33:54 8 A. Well , probably because this
11:33:55 9 affidavit was given -- what was the date on
11:33:58 10 that ? In 2005 . And my memory was probably
11:34:05 11 better then than it is now .

11:34:07 12 Q. Was it better in 2005 than it was
11:34:11 13 in 2011 ?

11:34:12 14 A. Probably . I would say on the
11:34:15 15 average .

11:34:18 16 MR. CAMPBELL: That's all I have .

11:34:19 17 THE WITNESS : With three different
11:34:20 18 testimonies , you know .

11:34:22 19 MR. CAMPBELL: That's all I have .

11:34:23 20 Thank you .

11:34:24 21 THE WITNESS: Yes, sir .

11:34:26 22 MR. SILVER: Okay . I think that
11:34:28 23 concludes -- oh, on the phone , anyone that wants
11:34:32 24 to ask a question on the phone ?

11:34:37 25 All right . I believe that concludes

11:34:39 1 the deposition . Jack , thank you very much .

11:34:48 2 (Thereupon, an off-the-record

11:34:48 3 discussion was had.)

11:35:06 4 MR. HOFFMAN: He'll read it.

11:35:07 5 (Thereupon, the deposition was

11:35:09 6 concluded at 11:35 a.m.)

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1 I, HORACE J. BOESCH, JR. , do hereby
2 certify that the foregoing is a true and accurate
3 transcription of my testimony.

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11:35:09

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Dated

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1 STATE OF OHIO)

2 COUNTY OF MONTGOMERY) SS: CERTIFICATE

3 I, Michelle A. Elam, a Notary

4 Public within and for the State of Ohio, duly
5 commissioned and qualified,

6 DO HEREBY CERTIFY that the
7 above-named HORACE J. BOESCH, JR., was by me first
8 duly sworn to testify the truth, the whole truth
9 and nothing but the truth.

10 Said testimony was reduced to
11 writing by me stenographically in the presence
12 of the witness and thereafter reduced to
13 typewriting.

14 I FURTHER CERTIFY that I am not a
15 relative or Attorney of either party, in any
16 manner interested in the event of this action,
17 nor am I, or the court reporting firm with which
18 I am affiliated, under a contract as defined in
19 Civil Rule 28(D).

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